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Arbitrage d'intérêts: Un examen de la méthode et des décisions aux termes de la *Loi sur les négociations collectives entre conseils scolaires et enseignants*, 1975-76 à 1981-8

SEPTEMBER, 1982

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Education Relations Commission
Ontario

Numéro 27

Arbitrage d'intérêts: Un examen de la méthode et des décisions aux termes de la *Loi sur les négociations collectives entre conseils scolaires et enseignants*, 1975-76 à 1981-82

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ARBITRAGE D'INTERETS: EXAMEN DE LA METHODE ET DES DECISIONS AUX TERMES DE LA LOI SUR LES NEGOCIATIONS COLLECTIVES ENTRE CONSEILS SCOLAIRES ET ENSEIGNANTS, 1975-76 A 1981-82

Cette monographie a été rédigée par la Commission des Relations de Travail en Education, dans le cadre des services qu'elle offre aux parties engagées dans des négociations de la manière prescrite dans la *Loi sur les négociations collectives entre conseils scolaires et enseignants*.

Cette publication a pour but:

> de donner des informations sur des décisions d'arbitrage d'intérêts rendues en conformité avec cette Loi.

Cette monographie traite de décisions rendues entre 1975-76 et 1981-82, qui étaient déposées auprès de la Commission à l'époque où cette publication fut rédigée.

«Arbitrage d'intérêts: Un examen de la méthode et des décisions aux termes de la *Loi sur les négociations collectives entre conseils scolaires et enseignants*» est remis sur demande aux parties et aux personnes qui en expriment l'intérêt.

Veuillez adresser toutes les questions concernant cette monographie et les demandes de renseignements supplémentaires aux:

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INTRODUCTION

Si les documents traitant de l'arbitrage des intérêts (méthode par laquelle une tierce partie détermine les conditions d'emploi entre un employeur et son personnel pendant une certaine période), sont nombreux, nous n'en avons que très peu qui traitent de manière approfondie de la méthode et des motifs de l'arbitre unique ou du conseil d'arbitrage rendant une décision.[1]

Ce sont souvent les décisions qui représentent la meilleure source d'information. La présente monographie décrit, à la fois par des résumés et des extraits, la nature de la méthode d'arbitrage en étudiant pratiquement toutes les décisions rendues aux termes de la Loi sur les négociations collectives entre conseils scolaires et enseignants [la «Loi»] (Statuts révisés de l'Ontario 1980).[2]

La Partie IV de la Loi, intitulée «Arbitrage obligatoire volontaire» traite d'une des deux méthodes que la législation a prévues pour faire résoudre les litiges par une tierce partie (l'autre méthode est le choix volontaire d'offre finale obligatoire); elle est reproduite intégralement à l'Appendice A. La fin de cette introduction donne un résumé de la méthode de l'arbitrage volontaire d'intérêts telle qu'elle figure dans la Loi.

Voici les diverses sections de cette monographie:

Section	Matières
1	Résumé statistique de l'arbitrage d'intérêts aux termes de la Loi.
2	Résumé et analyse de: a) Questions de procédure b) Questions de fond en litige

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[1] L'Appendice B contient cependant une bibliographie de certaines publications appropriées.

[2] Les lecteurs désireux de consulter la décision entière et non les parties traitées ici peuvent se reporter aux décisions classées auprès de la Commission des Relations de Travail en Education.

Section	Matières
3	Extraits de décisions concernant: a) Des problèmes de procédures b) Des problèmes de fond

Le lecteur est prié de noter que dans cette publication, les termes arbitrage d'intérêts, arbitrage volontaire d'intérêts et arbitrage, de même que arbitre(s) et conseil(s) d'arbitrage peuvent être intervertis.

Résumé de l'Article de la Loi consacré à l'Arbitrage volontaire des intérêts

Si les parties sont d'accord pour déférer toutes les questions encore en litige à un arbitre, elles préviendront conjointement la Commission par écrit en indiquant la date de la nomination et le nom et l'adresse de l'arbitre, ou demanderont à la Commission d'en nommer un. Si elles préfèrent un conseil d'arbitrage, elles préviendront conjointement la Commission par écrit en citant les noms et les adresses des personnes nommées par chaque partie; si une partie ou les deux n'ont nommé personne, elles doivent demander à la Commission de nommer le ou les membres.

Si les deux membres n'ont pas nommé de président dans les dix (10) jours, la Commission s'en chargera. Chaque partie devra donner un préavis écrit dans les sept (7) jours à l'arbitre ou conseil et à l'autre partie, énumérant tous les points acceptés au cours des négociations et tous les points restant en litige.

La décision de l'arbitre ou du conseil d'arbitrage lie les deux parties, mais la procédure peut prendre fin à toute époque si les parties aboutissent à une solution négociée.

L'arbitre ou le conseil d'arbitrage doit donner un rapport dans les soixante (60) jours après sa nomination.

Dans les trente (30) jours après réception du rapport les parties doivent être prêtes à signer un document englobant les points acceptés durant les négociations et la décision de l'arbitre ou du conseil d'arbitrage. Ce document constituera la convention.

SECTION 1

Arbitrage des intérêts, 1975-76 à 1981-82: Tableau général

Le Tableau 1 donne des détails sur chacune des décisions d'arbitrage d'intérêts depuis l'adoption en 1975 de la Loi sur les Négociations collectives entre Conseils scolaires et Enseignants. Au total, la méthode de l'arbitrage a été utilisée à 51 occasions;[3] tous les litiges ont été présentés volontairement par les parties au cours de leurs négociations, à l'exception des cas des secteurs secondaires du Grand Toronto, de Kirkland Lake, de Sault Ste-Marie et de Windsor où durant l'année de négociations 1975-76 la Loi mit fin aux moyens de pression légaux utilisés et imposa l'arbitrage pour résoudre les litiges.

Le Tableau 1 permet de dégager les points principaux suivants:

1. L'arbitrage d'intérêts a été choisi pour régler les conflits dans 51 cas:
   a) les parties ont recouru à l'arbitrage d'intérêts volontaire dans 42 cas, et
   b) la Loi a imposé l'arbitrage d'intérêts aux parties dans 9 autres cas (Conseils scolaires du Grand Toronto = 6); à la date d'aujourd'hui, tous les arbitrages imposés par la Loi se sont présentés dans la première année de la Loi et chaque fois dans le secteur secondaire.

Sur les 51 cas d'arbitrage d'intérêts:

2. 36 ou 70.5% concernent le Secteur Secondaire, 6 ou 11.8% le Secteur Elémentaire, et 6 ou 11.8% les Conseils scolaires séparés catholiques (CESC), et 3 ou 5.9% d'«autres Conseils»;
3. répartition par années de convention (septembre à août):

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[3] Le cas de 1975-76 entre les enseignants du secteur secondaire et le Conseil scolaire de la Ville de Toronto et des municipalités d'East York, Etobicoke, North York, Scarborough et York, a été inclus dans le titre Ecoles secondaires du Grand Toronto.

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Année de convention	Nombre de négociations avec arbitrage d'intérêts	Pourcentage des cas avec arbitrage d'intérêts
1975-76	13	25.5
1976-77	5	9.8
1977-78	6	11.8
1978-79	7	13.7
1979-80	9	17.6
1980-81	5	9.8
1981-82	6	11.8
Total	51	100.0

4. 24 ou 47.1% des situations ont recouru à l'arbitrage après avoir commencé à utiliser des moyens de pression légaux (ces 24 situations comprenaient les 9 cas où l'arbitrage fut imposé par la loi),

5. 27 ou 52.9% des situations ont recouru à un arbitre unique (9 furent imposées par la loi; 9 autres étaient des cas de médiation - arbitrage); les 24 autres situations (47.1%) ont utilisé un conseil d'arbitrage de trois personnes;

6. 9 ou 17.6% des situations ont combiné l'arbitrage et la médiation sous le nom de médiation/arbitrage ou «méd.-arb.». Les parties avaient recouru à cette variante pour obtenir la participation d'une tierce partie qui avait au début agi comme médiatrice pour tenter de résoudre les impasses. La tierce partie était d'abord chargée de la médiation; elle devint ensuite arbitre et rendit sa décision sur les points en litige.

TABLEAU 1

ARBITRAGE OBLIGATOIRE VOLONTAIRE/IMPOSE PAR LA LOI

(Résumé chronologique d'après la Loi sur les négociations collectives entre conseils scolaires et enseignants)

Année --- Date de la décision	Conseil scolaire	Type de convention (secteur)	Arbitre ou Président du Conseil d'arbitrage	Arbitre nommé par les enseignants en cas de Conseil d'arbitrage	Arbitre nommé par le Conseil scolaire en cas de Conseil d'Arbitrage	Arbitrage après moyens de pression?
1975-76						
3 mars/76	Grand Toronto(1,2)	Secondaires	C. Dubin			Oui
21 juin/76	Kent	Secondaires	J.D. O'Shea	E.G. Posen	J.P. Sanderson	Oui
3 mai/76	Kirkland Lake (2)	Secondaires	D.L. Johnston			Oui
17 août/76	Leeds & Grenville	Secondaires	S.R. Ellis	P. Atherton	W.L. Farrar	Non
8 nov./76	Sault Ste-Marie (2)	Secondaires	R.L. Kennedy			Oui
17 sept/76	Stormont, Dundas & Glengarry	Secondaires	A.M. Kruger	R.A. Arsenault	R.B. Milligan	Non
30 juin/76	Windsor (2)	Secondaires	G.S.P. Ferguson			Oui
14 avr/76	Direction des Ecoles provinciales*	Autre	H.J. Waisglass			Non
1976-77						
26 nov/76	Niagara South	Secondaires	R.L. Kennedy	N. Treanor	R.A. McLeod	Non
Sans date	Norfolk	Secondaires	M. Teplitsky			Non
24 août/77	Ottawa	Secondaires	M. Teplitsky	D. W. Knott	R. K. Laishley	Non
13 juin/77	Peel*	Secondaires	S. M. Beck			Oui
20 mai/77	Région de Durham	C.E.S.C.	R. L. Kennedy	R. Koskie	B. H. Stewart	Oui

(1) Comprend tous les six (6) Conseils scolaires du Grand Toronto
(2) Arbitrage obligatoire imposé par la Loi
* Médiation/arbitrage

TABLEAU 1 (suite)

Année --- Date de la décision	Conseil scolaire	Type de convention (secteur)	Arbitre ou Président du Conseil d'arbitrage	Arbitre nommé par les enseignants en cas de Conseil d'arbitrage	Arbitre nommé par le Conseil scolaire en cas de Conseil d'Arbitrage	Arbitrage après moyens de pression?
1977-78						
26 sept/78	Lambton	Elémentaires	R.L. Kennedy	C. Tower	M. Riddell	Non
10 juil/78	Huron	Secondaires	D. L. Johnston			Oui
Sans date	Lambton	Secondaires	M. Teplitsky	A. S. Tirrell	M. Riddell	Non
2 oct./78	Renfrew	Secondaires	K. P. Swan	R. Koskie	M. Riddell	Oui
13 sept./78	Wentworth*	Secondaires	M. Teplitsky			Oui
25 avr./78	Frontenac, Lennox & Addington	C.E.S.C.	S. M. Beck	D. Forsyth	D. K. Grey	Non
1978-79						
4 juin/79	Ottawa*	Elémentaires	M. Teplitsky			Non
21 sept./79	Kent	Secondaires	R. L. Kennedy	D. W. Knott	L.S. Simpson	Non
12 oct./79	Kirkland Lake	Secondaires	K. M. Burkett	A.S. Tirrell	K.R. Valin	Oui
2 juil./79	Muskoka	Secondaires	R. L. Kennedy	M. Cazabon	K. R. Valin	Non
1er mai/79	Norfolk	Secondaires	J. F. W.Weatherill			Non
28 juin/79	Northumberland & Newcastle	Secondaires	R. L. Kennedy	M. Cazabon	M. Riddell	Non
19 oct./78	Sault Ste-Marie	Secondaires	B. M. Downie			Non

*Médiation/Arbitrage

TABLEAU 1 (suite)

Année --- Date de la décision	Conseil scolaire	Type de convention (secteur)	Arbitre ou Président du Conseil d'arbitrage	Arbitre nommé par les enseignants en cas de Conseil d'arbitrage	Arbitre nommé par le Conseil scolaire en cas de Conseil d'arbitrage	Arbitrage après moyens de pression?
1979-80						
11 juil/79	Essex*	Elémentaires	M. Teplitsky			Non
23 janv./80	Peel	Elémentaires	R. L. Kennedy	R. Koskie	W. G. Wright	Oui
11 juin/80	Halton*	Secondaires	M. Teplitsky			Non
9 juil./80	Lambton	Secondaires	H. L. Ladd	C. G. Paliare	J. P. Sanderson	Oui
7 mars/80	North York*	Secondaires	M. Teplitsky			Oui
17 juin/80	Peel	Secondaires	R. L. Kennedy	M. Cazabon	N. MacL. Rogers	Non
26 fév./80	Municipalité de York*	Secondaires	M. Teplitsky			Non
6 déc./79	Comté de York	Secondaires	K. M. Burkett	D. W. Knott	B. H. Stewart	Oui
Sans date	Ottawa*	C.E.S.C.	S. M. McBride			Non
1980-81						
4 mai/81	Peel	Elémentaires	M. Teplitsky	R. Koskie	N. MacL. Rogers	Non
31 mars/81	Kirkland Lake	Secondaires	K. M. Burkett			Non
16 mars/81	Norfolk	Secondaires	G. H. McKechnie	J. A. Ryder	W. G. Wright	Oui
27 août/81	Base des Forces canadiennes Petawawa	Autre-Sec.	R. O. MacDowell	M. Cazabon	G. Duncan	Non
11 déc./80	Moosonee	Autre-CESC	M.A.F. Stockton			Non
1981-82						
Non reçue	Peel	Elémentaires	R. L. Kennedy	S. Lewis	N. MacL. Rogers	Non
8 avr./82	Kirkland Lake	Secondaires	A.Barrett	J. Emond	N. M. Karam	Non
Non reçue	West Parry Sound	Secondaires	T. G. Bastedo	E. G. Posen	E. T. McDermott	Oui
9 juil./82	Carleton (O.E.C.T.A.)	C.E.S.C.	W. Marcotte			Oui
9 juil./82	Carleton (A.E.F.O.)	C.E.S.C.	W. Marcotte			Oui
7 mars/82	Lakehead	C.E.S.C.	N. Bernstein			Non

*Médiation/Arbitrage

En combinant ces renseignements à d'autres sur la méthode des négociations entre 1975-76 et 1981-82 inclusivement, nous obtenons une image de l'emploi relatif de l'arbitrage d'intérêts que reflète le Tableau 2.

Principales conclusions de l'examen du Tableau 2:

1. l'arbitrage d'intérêts a été utilisé dans 4.0% des 1,288 séries de négociations entre 1975-76 et 1981-82 (1.4% des 439 négociations du secteur Elémentaire, 8.4% des 428 du Secondaire, 2.2% des 278 des C.E.S.C. et 2.1% des 143 «autres»,
2. l'arbitrage d'intérêts a été utilisé le plus souvent - 6.4% - pendant la première année de la Loi (1975-76). Depuis cette époque le pourcentage n'a jamais dépassé 5%; pour les sept années de négociations étudiées, l'arbitrage d'intérêts pour résoudre une impasse a été utilisé chaque année en moyenne dans 4% des cas;
3. quoiqu'elles ne figurent pas au Tableau 2, les statistiques ci-après indiquent, par année de convention, la proportion des enseignants dont les conditions d'emploi furent déterminées par l'arbitrage d'intérêts:

Année de convention	Proportion des enseignants engagés dans un arbitrage d'intérêts
1975-76	11.4
1976-77	4.8
1977-78	2.5
1978-79	3.0
1979-80	11.3
1980-81	2.8
1981-82	3.9

Les chiffres ci-dessus représentent une moyenne annuelle de 5.7% du total des enseignants.

TABLEAU 2 (1)

CHIFFRES ABSOLUS ET RELATIFS POUR LES SITUATIONS DE NEGOCIATIONS (Nbre de NEG.) RECOURANT A L'ARBITRAGE:
PAR ANNEE, TYPE DE CONVENTION, ET COMBINEES

Année	ELEMENTAIRES			SECONDAIRES(2)			C.E.S.C.			«AUTRES» CONSEILS (3)			TOUTES SITUATIONS COMBINEES		
	Nbre de négoc.	Nbre de décisions	%	Nbre de négoc.	Nbre de décisions	%	Nbre de négoc.	Nbre de décisions	%	Nbre de négoc.	Nbre de décisions	%	Nbre de négoc.	Nbre de décisions	%
1975-76	76	-	0.0	74	12	16.2	46	-	0.0	6	1	16.7	202	13	6.4
1976-77	65	-	0.0	61	4	6.6	41	1	2.4	22	-	0.0	189	5	2.6
1977-78	75	1	1.3	72	4	5.6	45	1	2.2	18	-	0.0	210	6	2.9
1978-79	68	1	1.5	72	6	8.3	44	-	0.0	23	-	0.0	207	7	3.4
1979-80	63	2	3.2	54	6	11.1	42	1	2.4	21	-	0.0	180	9	5.0
1980-81	42	1	2.4	44	2	4.5	23	-	0.0	23	2	8.7	132	5	3.8
1981-82	50	1	2.0	51	2	3.9	37	3	8.1	30	-	0.0	168	6	3.6
Total	439	6	1.4	428	36	8.4	278	6	2.2	143	3	2.1	1,288	51	4.0

(1) Veuillez noter que le choix d'offre finale a été utilisé dans 13 cas (1 Elémentaire, 10 Secondaires et 2 C.E.S.C.); 5 en 1975-76, 3 en 1976-77, 2 en 1977-78, 1 en 1978-79, 2 en 1979-80 et 0 en 1980-82). Les cas de choix d'offre finale viennent en surcroît aux cas d'arbitrage d'intérêts cités au Tableau 2.

(2) Pour 1975-76, comprend tous les conseils scolaires du Grand Toronto.

(3) Comprend: Direction des écoles provinciales, Conseils régionaux d'écoles de district, Conseils scolaires séparés protestants, Conseils scolaires séparés catholiques isolés, Bases des Forces canadiennes, Centre de Ontario Hydro, Hôpitaux et Centres de Traitement.

Résumé statistique de la nature des questions en litige dans l'arbitrage

Le Tableau 3 donne, en chiffres absolus et en chiffres relatifs, la fréquence des questions en litige qui ont fait l'objet de 46 décisions d'arbitrage d'intérêts. Elles ont été classées en 9 catégories; dans chacune de celles-ci, nous avons indiqué le total des décisions et sa proportion par rapport au total général (c.-à-d. 46). Nous donnons en outre la fréquence de chacune des matières (Plassement sur la grille, Traitements, Allocations etc.).

Sujets ayant le plus souvent fait l'objet de décisions:

Traitements - 38 décisions (82.6%)
Allocations - 31 décisions (67.4%)
Avantages sociaux - 27 décisions (58.7%)
Congés - 20 décisions (43.5%)
Dotation en personnel et Volume de travail - 20 décisions (43.5%)
Sécurité de l'emploi - 18 décisions (39.1%)

Un examen plus approfondi du Tableau 3 nous donne des renseignements plus spécifiques sur les questions en litige. Sur les six (6) matières ci-dessus, les deux ou trois plus fréquentes sont:

Sujets traités	Rubriques les plus fréquentes
Traitements	Grille des enseignants, directeurs, sous-directeurs
Allocations	Postes à responsabilités, diplôme, cherté de la vie
Avantages sociaux	Soins dentaires, assurance-vie collective, OHIP, assurance-maladie supplémentaire (même fréquence pour les deux derniers)
Congés	Sabbatique, accumulation de congé-maladie
Dotation en personnel et volume de travail	Rapport élèves-enseignants/dotation en personnel, congés pour raisons professionnelles
Sécurité de l'emploi	Ancienneté, procédure pour surnombre/excédent

TABLEAU 3

FREQUENCE DES QUESTIONS EN LITIGE DANS LES DECISIONS D'ARBITRAGE

(d'après 46 décisions. Il n'a pas été possible de déterminer les questions arbitrées dans le Secteur Secondaire de la Municipalité de York en 1979-80. Les décisions de 1981-82 pour les secteurs Elémentaire de Peel, Secondaire de West Parry Sound et C.E.S.C. de Carleton [à la fois O.E.C.T.A. et A.E.F.O.] n'étaient pas disponibles pour l'analyse détaillée).

	Nbre de décisions	%
Placement sur la grille des traitements		
Base de l'évaluation (QECO, Certification OSSTF)	1	2.2
Expérience professionnelle correspondante	2	4.3
Autre expérience correspondante	2	4.3
Total des décisions	4	8.7
Traitements		
Grille des traitements des enseignants	38	82.6
Nombre d'années pour atteindre le maximum	6	13.0
Traitement/Indemnité pour Directeur	31	67.4
Traitement/Indemnité pour Sous-Directeur	29	63.0
Augmentation	4	8.7
Parité de la grille des traitements pour enseignants élémentaires et secondaires	1	2.2
Traitement/Indemnité pour Conseiller/ Coordinateur	7	15.2
Enseignement autre que de jour	2	4.3
Total des décisions	38	82.6
Allocations		
Cherté de la vie	12	26.1
Cherté de la vie incorporée	10	21.7
Diplôme	19	41.3
Postes à responsabilités (autres que Directeurs ou Sous-Directeurs)	21	45.7
Matière spéciale	4	8.7
Expérience professionnelle/Métier	5	10.9
Paiement de somme forfaitaire	7	15.2
Service militaire	1	2.2
Mérite	4	8.7
Total des décisions	31	67.4
Avantages sociaux		
Plan de l'assurance-maladie de l'Ontario (OHIP)	17	37.0
Régime d'assurance-vie collective	18	39.1
Régime d'assurance-maladie supplémentaire	17	37.0
Régime d'assurance-médicaments	1	2.2
Soins dentaires	19	41.3
Soins de la vue	1	2.2
Assurance-invalidité à long terme	12	26.1
Gratification de retraite	7	15.2

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TABLEAU 3 (suite)

	Nbre de décisions	%
Avantages sociaux (suite)		
Hospitalisation en chambre à 2 lits	8	17.4
Indemnité de cessation d'emploi	6	13.0
Assurance-chômage	2	4.3
Admissibilité des enseignants à temps partiel	1	2.2
Régime combinant deux avantages ou plus	5	10.9
Total des décisions	27	58.7
Congés		
Accumulation de congé-maladie	10	21.7
Sabbatique	13	28.3
Maternité	1	2.2
Paternité	1	2.2
Affaires de Fédération	2	4.3
Négociations	3	6.5
Deuil/Raisons humanitaires	1	2.2
Rendez-vous avec médecin	1	2.2
Régime de congé avec traitement différé	3	6.5
Autres	3	6.5
Total des décisions	20	43.5
Dotation en Personnel et Volume de Travail		
Rapport élèves-enseignants/Formule de dotation en personnel	16	34.8
Effectifs dans les classes	5	10.9
Horaire d'enseignement-Enseignants	6	13.0
Organisation d'écoles/Système scolaire	2	4.3
Jours pour perfectionnement professionnel	8	17.4
Dotation en Directeurs/Sous-Directeurs	2	4.3
Création de postes à responsabilités	2	4.3
Horaire d'enseignement - Enseignants à temps partiel	1	2.2
Total des décisions	20	43.5
Sécurité de l'emploi/Surnombre/Excédent/Transfert		
Ancienneté	11	23.9
Transfert	3	6.5
Surnombre/Excédent-Enseignants	11	23.9
Surnombre/Excédent-Postes à responsabilités	1	2.2
Juste cause	4	8.7
Régime d'encouragement à la retraite anticipée	2	4.3
Total des décisions	18	39.1

	Nbre des décisions	%
Prise de décision		
Comités d'Enseignants/Conseillers	13	28.3
Droits de la direction	2	4.3
Pratiques actuelles	2	4.3
Procédure en matière de griefs	3	6.5
Total des décisions	15	32.6
Divers		
Durée de la convention	7	15.2
Méthode de paiement	1	2.2
Temps libre pour rencontres avec tierces parties	2	4.3
Conseil anti-inflation	15	32.6
Rétroactivité	7	15.2
Accès à écoles	1	2.2
Mesures disciplinaires	8	17.4
Ecole d'été/du soir	4	8.7
Enseignement occasionnel/Intérimaire	7	15.2
Prélèvement local des cotisations	6	13.0
Moyens de pression	7	15.3

En bref, le Tableau 3 montre que l'arbitrage a traité des questions de nature très différente, et que la plupart des litiges étaient des problèmes de rémunération directe. Toutefois environ 40% des arbitres ont dû traiter certains problèmes de dotation en personnel et de sécurité de l'emploi.

Nombre de rubriques contestées

Le Tableau 4 indique la distribution des fréquences des décisions d'arbitrage d'après le nombre des problèmes résolus par cette méthode. Leur nombre se situe entre 1 et 30 pour les 46 décisions disponibles pour cette analyse.

- 15 ou 32.7% des décisions traitaient de 5 rubriques ou moins
- 6 ou 13.0% des décisions traitaient de 6 à 10 rubriques
- 11 ou 23.9% des décisions traitaient de 11 à 15 rubriques
- 7 ou 15.2% des décisions traitaient de 16 à 20 rubriques
- 7 ou 15.2% des décisions traitaient de plus de 20 rubriques

TABLEAU 4

NOMBRE DE RUBRIQUES RESOLUES PAR ARBITRAGE D'INTERETS

(basé sur 46 cas. Il n'a pas été possible d'inclure les litiges arbitrés dans le secteur secondaire de la Municipalité de York en 1979-80, et nous ne disposons pas des décisions de 1981-82 pour les secteurs Elémentaire de Peel, Secondaire de West Parry Sound et C.E.S.C. de Carleton (à la fois O.E.C.T.A. et A.E.F.O.).

Nbre de rubriques arbitrées	Nbre de décisions	%
1	4	8.7
2	4	8.7
4	4	8.7
5	3	6.5
6	1	2.2
7	2	4.3
8	3	6.5
11	3	6.5
12	5	10.8
13	2	4.3
15	1	2.2
17	1	2.2
18	1	2.2
19	4	8.7
20	1	2.2
23	1	2.2
26	4	8.7
28	1	2.2
30	1	2.2
Total	46	100.0

Une analyse plus approfondie révèle que le nombre moyen des rubriques par arbitrage était de 11.7 pour une médiane de 11.2. Les moyennes se présentaient comme suit par type de convention: Elémentaires = 7.4, Secondaires = 13.9 et C.E.S.C. = 3.8.

L'analyse des corrélations[4] indique qu'au cours des années, le nombre des rubriques en litige a reculé (coefficient de corrélation de - 0.21). Ceci signifie qu'on a observé entre 1975-76 et 1981-82

[4] Technique statistique employée pour mesurer le degré de relation (c.-à-d. le coefficient de corrélation) entre deux variantes. Le coefficient de corrélation peut être positif ou négatif et avoir une valeur entre 0 et 1 ou - 1. Une valeur de 0 indique l'absence de corrélation entre les deux variantes examinées, tandis que la valeur de 1 ou de - 1 indique une relation parfaite (c.-à-d. chaque fois que la valeur de l'une des rubriques augmente (diminue), la valeur de l'autre à laquelle elle est reliée augmente (diminue) également). La méthode employée est appelée la méthode du coefficient de corrélation de Pearson «produit moment».

une tendance à la diminution dans le nombre des rubriques soumises à l'arbitrage d'intérêts.

Evénements précédant l'arbitrage

Le Tableau 5 indique que pour les 51 cas disponibles pour l'analyse, l'arbitrage avait été précédé dans 24 ou 47.1 des cas par une combinaison d'enquête, de médiation ou d'une certaine forme de pression. Dans 19 ou 37.2% des cas, l'arbitrage avait été précédé par une médiation et une enquête, et 5 (9.8%) des cas n'avaient reçu qu'une seule forme d'assistance par tierce partie. Dans 3 (5.9%) des cas l'arbitrage avait été utilisé avant toute autre forme d'intervention de tierce partie.

TABLEAU 5
EVENEMENTS DURANT LES NEGOCIATIONS AVANT L'ARBITRAGE
(basé sur 51 cas)

Evénement(s) durant négociations	Nbre	%
Sans intervention de tierce partie	3	5.9
Uniquement médiation	3	5.9
Uniquement enquête	2	3.9
Médiation et enquête	19	37.2
Médiation, enquête et grève	14	27.5
Médiation, enquête, grève et lock Out/Fermeture d'école(s)	10	19.6
Total	51	100.0

L'analyse de la corrélation indique un rapport positif entre le nombre des événements précédant l'arbitrage et le nombre des rubriques en litige lors de l'arbitrage (coefficient de corrélation de 0.23). La même forme d'analyse indique également pour la période de 1975-76 à 1981-82 une diminution dans le nombre des événements précédant l'arbitrage pour les situations recourant à cette forme de solution (coefficient de corrélation de - 0.38).

Arbitre unique comparé au Conseil d'Arbitrage

Sur le total des 51 arbitrages, 27 ou 52.9% avaient recouru à un arbitre unique, et les 24 autres à un Conseil d'Arbitrage de

3 personnes. Comme nous l'avons noté précédemment, les 27 cas avec arbitre unique comprenaient 9 cas d'arbitrage imposé par la loi, et 9 cas de médiation-arbitrage.

Sur les 24 cas ayant recouru à un conseil de 3 personnes, 22 étaient à notre disposition pour l'analyse finale; 12 ou 54.5% ont abouti à des décisions unanimes, et 9 ou 40.9% avaient été décidés à la majorité (c.-à-d. avec opposition de la personne nommée par une des parties). Dans le cas restant, la décision avait été prise par le président (c.-à-d. avec opposition des personnes nommées par les deux parties).

Le Tableau 6 donne un résumé statistique.

TABLEAU 6

ARBITRE UNIQUE COMPARE A CONSEIL D'ARBITRAGE

(basé sur 49 cas - les décisions pour les écoles élémentaires de Peel et secondaires de West Parry Sound de 1981-82 n'étaient pas disponibles)

Méthode	Nbre	%
Arbitre unique	27	55.1
Conseil d'arbitrage (décision unanime)	12	24.5
Conseil d'arbitrage (décision à la majorité)	9	18.4
Conseil d'arbitrage (décision du président)	1	2.0
Total	49	100.0

Une analyse plus approfondie indique qu'en moyenne l'arbitre unique devait rendre une décision sur 13.3 rubriques et les conseils d'arbitrage sur 10.

Le diagramme ci-après compare les décisions des arbitres uniques et des conseils d'arbitrage où les litiges étaient: (1) uniquement des questions de rémunération[5], (2) d'autres points contestés s'ajoutant à la rémunération directe ou (3) des points ne concernant pas uniquement la rémunération directe.

[5] Par rémunération directe il faut entendre les traitements, indemnités et avantages sociaux. Les autres rubriques sont les conditions de travail, la sécurité de l'emploi et les congés.

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	Questions de de rémunération directe uniquement	Rémunération directe et autres rubriques	Rubriques autres que rémunération directe
Arbitre unique	5	16	3
Conseil d'arbitrage	9	12	1
Total	14	28	4

Il est intéressant de noter la proportion des cas où les arbitres uniques devaient décider de rubriques s'ajoutant à celle de la rémunération directe. Sur les 46 décisions disponibles pour l'analyse, 32 traitaient, au moins en partie, de litiges comme les conditions de travail et/ou la sécurité de l'emploi. Sur ces 32 cas, 19 décisions ou 59.4% avaient été rendues par un arbitre unique.

Certains praticiens de l'arbitrage ont laissé entendre que les problèmes de rémunération non directe sont ceux où ils éprouvent le plus difficulté pour rendre leur décision. Les arbitres nommés par les parties rendent souvent de grands services au conseil d'arbitrage, aux parties engagées et à la procédure.

Région de Ministère et Arbitrage d'Intérêts

Le Tableau 7 montre comment les arbitrages d'intérêts sont répartis dans leurs diverses Régions du ministère de l'Education. 22 ou 44.0% des décisions concernent des conseils scolaires situés dans la Région Centrale, suivie par la Région de l'Est avec 10 ou 20.0%.

La comparaison entre le Sud et le Nord de l'Ontario révèle que 80% des décisions d'arbitrage ont été rendues pour des conseils scolaires et des enseignants de la partie sud de la province.

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TABLEAU 7

FREQUENCE DES ARBITRAGES D'INTERETS PAR REGION DU MINISTERE DE L'EDUCATION

(basé sur 50 cas. La Direction des Ecoles Provinciales administre des établissements dans plus d'une région et a été omise)

REGION DU MINISTERE	Nbre	%
Nord-Ouest	1	2.0
Nord-Centre	2	4.0
Nord-Est	7	14.0
Ouest	8	16.0
Centre	22	44.0
Est	10	20.0
Total	50	100.0

Nombre d'Employés par Unité de Négociations et Arbitrage d'Intérêts

Le Tableau 8 indique comment les décisions d'arbitrage sont distribuées selon le nombre des employés dans les unités de négociations; ces unités ont été groupées en 5 catégories.

Les groupes de 101 à 500 employés arrivent en tête avec 20 décisions ou 39.2%. Cette catégorie est suivie par les groupes de 501 à 1,000 avec 11 ou 21.6%. Les groupes les moins nombreux (moins de 100) et les plus nombreux (plus de 2,000) ont obtenu respectivement 7 et 6 décisions.

TABLEAU 8

NOMBRE D'EMPLOYES DONT LES CONDITIONS ONT ETE DETERMINEES PAR ARBITRAGE D'INTERETS

(basé sur 51 cas)

Nbre d'employés	Nbre de décisions	%
moins de 100	7	13.7
101 - 500	20	39.2
501 - 1,000	11	21.6
1,001 - 2,000	7	13.7
plus de 2,000	6	11.8
Total	51	100.0

L'analyse des corrélations a permis de dégager les rapports ci-après entre le nombre des employés par unité de négociations et les cas tranchés par arbitrage.

Employés par unité de négociations par rapport à:	Coefficient de corrélation	Interprétation
Evénements précédant l'arbitrage	0.18	Les probabilités d'autres formes d'intervention par tierce partie et de recours à des moyens de pression augmentent à mesure que s'élève le nombre des employés dans l'unité de négociations.
Nombre de rubriques en litige	0.24	Le nombre des rubriques en litige augmente à mesure que les effectifs de l'unité de négociations sont plus nombreux.

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SECTION 2

Cette section de la monographie traite des points marquants des questions de procédure et de fond citées dans 46 des 51 décisions d'arbitrage d'intérêts rendues depuis l'adoption en juillet 1975 de la Loi sur les Négociations collectives entre Conseils scolaires et Enseignants.

Elle est suivie de la Section 3 qui contient des citations littérales extraites des décisions. Comme nous l'avons déjà mentionné, certains lecteurs désirent examiner des décisions intégrales. Les décisions sont classées au bureau de la Commission qui les envoie à mesure qu'elles deviennent disponibles aux échelons provinciaux des organisations d'enseignants et de conseillers.

De très nombreux documents ont servi de base à la présente Section, comme l'attestent les nombreux extraits de la Section 3. Il faut cependant remarquer que tous les arbitres ne font pas de commentaires, détaillés ou non, sur chaque point en litige qu'ils ont dû trancher. Si les tableaux de la Section 1 peuvent indiquer qu'un point déterminé fait partie d'une décision, le lecteur ne doit toutefois pas nécessairement s'attendre à trouver une référence à ce point dans chaque décision citée dans cette section ou dans la suivante.

Les commentaires de cette section sont présentés sous les titres suivants:

<u>Questions de procédure</u>

1. Rôle de l'arbitre
2. Procédure d'arbitrage
3. Questions en litige
4. Nouvelles positions adoptées lors de l'arbitrage
5. Rôle des négociations précédentes
6. Influence de la convention provisoire non ratifiée
7. Sources des données
8. Questions de procédure diverses
   a) Signature de la convention
   b) Préjugés en matière légale

<u>Questions de fond</u>

1. Critères (généraux)

2. Traitements
   a) Grille des enseignants
   b) Directeurs et sous-directeurs
3. Allocations
   a) Cherté de la vie
   b) Diplôme
   c) Postes à responsabilités
4. Gratification de retraite
5. Avantages sociaux
6. Congés
   a) Généraux
   b) Traitement différé
   c) Affaires de fédération
   d) Sabbatique
   e) Congé-maladie
7. Conditions de travail
   a) Volume de travail
   b) Rapport élèves-enseignants/ Dotation en personnel
8. Surnombre/Excédent
9. Ecole du soir/d'été
10. Questions de fond diverses
    a) Prélèvement des cotisations (local)
    b) Pratiques existantes
    c) Griefs
    d) Juste cause
    e) Paiement de somme forfaitaire/d'argent comptant
    f) Postes à responsabilités (Création de)
    g) Jours pour perfectionnement professionnel
    h) Mesures disciplinaires
    i) Durée de la convention
    j) Expérience en métier (Reconnaissance d')
    k) Transfert

QUESTIONS DE PROCEDURE

Un arbitrage d'intérêts peut susciter des problèmes ou des difficultés de procédure. Selon le cas, l'arbitre ou le conseil d'arbitrage peut les régler et parfois les discuter dans les décisions.

Dans cette monographie, les sujets de cette nature ont été isolés et classés comme des "questions de procédure"; ils forment la base des commentaires résumés de la section suivante.

Rôle de l'arbitre

Si à strictement parler le rôle de l'arbitre ne consiste peut-être pas à régler la procédure, les sections des décisions qui traitent du problème révèlent comment les arbitres abordent leur mission.

En général, l'arbitre considère son rôle d'une manière judiciaire. Il évalue les preuves présentées et les arguments des parties, et se base sur ses constatations pour rendre sa décision. La charge incombe dans une grande mesure, sinon entièrement, aux parties de défendre leurs positions par des arguments, pratiquement comme devant un tribunal. Si nous donnons une interprétation étroite au rôle de l'arbitre, nous pourrions dire que la méthode serait proche du choix d'offre finale pour chacun des points, et que les probabilités sont minimes, sinon nulles, que la différence soit partagée entre les positions adoptées.

D'autres arbitres se considèrent davantage comme des médiateurs et ils adoptent une position qui leur accorde plus de latitude. Tout en acceptant la nature judiciaire de leurs responsabilités ils ont tendance à considérer les points en litige comme un seul ensemble et suggèrent que non seulement ils doivent élaborer une décision médiane entre les positions des parties, mais qu'ils peuvent même aller au-delà ou en-deçà des positions pour créer un équilibre global.

L'arbitre a souvent été critiqué à la suite de décisions établissant des conditions d'emploi situées à un point intermédiaire entre les positions des parties (c.-à-d. "en partageant les différences"). Ceci mérite quelques remarques. Comme fréquemment les preuves et les arguments ne sont pas pleinement convaincants, une position intermédiaire peut être juste et équitable. Un arbitre a suggéré que lorsque les parties déterminent leurs positions, elles se fixent elles-mêmes une "dose de modération" que l'arbitre doit

découvrir. Un autre, exprimant peut-être le même raisonnement mais en d'autres termes, a suggéré que l'arbitre a pour rôle d'élaborer une décision qui se rapprocherait dans toute la mesure du possible au compromis que les parties auraient négocié si elles avaient été laissées à elles-mêmes. Tout en admettant que ce point de vue est quelque peu artificiel, les parties s'étant montrées incapables d'aboutir, l'arbitre a cependant intérêt à examiner les négociations et conventions collectives précédentes dans des situations comparables afin d'aboutir à la position que les parties auraient adoptées si elles avaient eu un échange de vues suffisant et tenu un dialogue rationnel.

Tout ceci peut sembler subtil, mais les décisions indiquent que le rôle de l'arbitre est variable. Une latitude plus grande se traduit par une tendance plus grande à la médiation: l'arbitre considère les points en litige comme un seul ensemble et rend une décision médiane entre les positions présentées, et même au-delà; il cherche à aboutir à ce que les parties auraient conclu elles-mêmes. Si la latitude est moindre, l'arbitre tend à traiter chaque rubrique indépendamment et à façonner une décision qui avantage plus ouvertement une des positions présentées, et ne cherchera probablement pas à obtenir des informations sur les négociations précédentes autres que celles qui lui ont été offertes.

Procédure d'arbitrage

La plupart des décisions traitent d'une certaine manière des questions de procédure, mais non de manière approfondie.

La Loi impose certaines exigences aux parties qui choisissent l'arbitrage d'intérêts, entre autres:

1. un préavis conjoint des parties qui conviennent de déférer des litiges à l'arbitrage,
2. la nomination d'un arbitre unique ou d'un conseil d'arbitrage (dont un président),
3. l'avis remis à l'arbitre ou au conseil d'arbitrage énumérant les questions en litige et celles acceptées par les deux parties, et
4. après la décision, rédiger et signer une convention.

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De plus, la Loi impose à l'arbitre certaines lignes directrices en matière de procédure, entre autres:

1. le droit de déterminer la procédure mais en laissant toute latitude aux parties pour présenter leurs preuves et faire leurs observations,
2. la possibilité de convoquer des témoins et de présenter des éléments de preuve,
3. de faire une enquête sur chaque élément jugé utile pour élaborer une convention et rendre sa décision sur toutes les questions en litige,
4. de fixer un délai pour la décision, et
5. rédiger et signer la convention après la décision d'arbitrage si les parties s'en abstiennent.

Les lecteurs qui désirent des renseignements plus détaillés sur ces procédures légales trouveront à l'Appendice A la partie de la Loi consacrée à l'arbitrage volontaire obligatoire.

La plupart des décisions font observer que les parties ont reçu toute latitude pour présenter leurs preuves et leurs arguments et que tous les éléments ont été examinés avant de rendre la décision. Certaines décisions donnent des détails supplémentaires sur la procédure adoptée comme:

1. les dates des audiences,
2. si les audiences étaient publiques ou à huis clos,
3. le temps consacré à la présentation et à la réfutation des conclusions,
4. les demandes d'extension de délais, d'ajournement et
5. la présentation des preuves orales ou écrites ou des deux à la fois.

L'extrait de la décision de médiation-arbitrage de 1976-77 pour les Ecoles secondaires de Peel est intéressant car il décrit la procédure suivie pour cette variante de l'arbitrage d'intérêts conventionnel.

Questions en litige

La Loi exige que les parties qui ont convenu de recourir à l'arbitrage obligatoire volontaire, présentent à l'arbitre ou au conseil d'arbitrage une liste de points encore en litige. Deux formes de questions ont été soulevées à cet égard:

1. Le point contesté est-il légalement susceptible d'être arbitré?
2. Relève-t-il de la compétence de l'arbitre?

Ces deux types de questions se sont présentés, mais rarement.

Il semble communément admis qu'un point non soulevé ne sera pas arbitré. Si ceci semble parfaitement logique à première vue, nous avons noté des cas où après la décision, des clarifications étaient nécessaires pour un point particulier que l'arbitre avait estimé ne pas avoir été soulevé initialement. Il en résulta un refus de modifier la décision. A titre d'exemple nous citerons un cas où un des points contestés était la subvention versée par un conseil scolaire à un régime d'avantages sociaux. Quand on souleva la question du barème des cotisations pour la subvention, l'arbitre décida que la question du barème n'avait pas été présentée initialement comme point en litige.

Lorsque l'usage précédent et la terminologie utilisée par les parties dans leur contexte local s'appliquent spécifiquement à la situation, les arbitres ont décidé de les employer pour identifier les points en litige. Dans un cas, l'acronyme "S.T.S." (Senior Teachers' Salary, ou traitement des enseignants principaux) qui, après avoir été établi, servait de base pour déterminer les traitements et certaines allocations, avait été présenté comme un point en litige. En fait, le point en litige était l'allocation pour diplôme qui n'avait pas été mentionnée expressément. Recourant à la méthode des situations spécifiques, l'arbitre décida que le point devait être résolu. En général toutefois les arbitres hésitent à trancher des points non mentionnés au début.

Deux autres critères ont été présentés pour déterminer si un point est légalement en litige: (1) a-t-il été soulevé avant de passer à l'arbitrage, et quel critère comporte d'autres réserves, (2) a-t-il été retiré ou décidé?

Plusieurs critères ont été présentés pour savoir si un point en litige relève de la compétence de l'arbitre:

1. existe-t-il un précédent légal?

2. la convention peut-elle inclure le point (c.-à-d. est-il une condition d'emploi)?
3. a-t-il été traité dans d'autres conventions collectives?

Nouvelles Positions dans l'Arbitrage

Une partie adoptant une position nouvelle ou une position "surprise" durant un arbitrage n'a pas été un fait courant, du moins d'après ce que révèlent les décisions. Dans au moins un cas cependant une des parties a prétendu avoir agi parce que l'autre n'avait pas négocié de bonne foi. L'arbitre estima que cette plainte était inappropriée au litige en cours.

Les réactions des arbitres envers ces nouvelles positions sont variées. S'ils les ont parfois qualifiées de négociations d'arrière-pays, ils les ont dans d'autres circonstances, incorporées dans leur décision.

Il semble donc que l'on s'attend en général à ce que les positions adoptées immédiatement avant l'audience soient très similaires à celles de l'audience, et que toute partie modifiant sa position risque de le faire à son détriment. Nous avons toutefois un extrait d'une décision indiquant qu'une nouvelle position peut être tellement solide dans son ensemble et dans sa logique qu'elle répond aux besoins des deux parties et devient la base de la décision.

Rôle des négociations précédentes

A part les conventions provisoires non ratifiées, les négociations précédentes n'ont été que rarement dans les décisions. Pour les trois cas présentés à la Section 3, une distinction semble avoir été faite entre (1) les négociations ayant donné lieu à un arbitrage, et (2) les négociations précédentes n'ayant pas donné lieu à un arbitrage.

En ce qui concerne les négociations antérieures, nous noterons que les arbitres n'accordent pas grand poids aux résultats de

négociations qualifiées d'inéquitables, surtout lorsque l'issue avait été atteinte sans intervention de tierce partie.

Pour les négociations aboutissant à l'arbitrage, les déclarations des arbitres semblent variées. Un extrait déclare que l'arbitre " ... doit tenir compte non seulement de ce que les parties déclarent à l'audience et dans leurs exposés écrits, mais également à ce qu'ils ont dit et aux positions qu'elles ont adoptées durant les divers stades des négociations...". Un autre note que la demande des parties de faire exclure les déclarations des tierces parties engagées précédemment "... est absolument pertinente et généralement conforme à la jurisprudence habituelle...". Il est possible d'établir une distinction entre ces deux positions, l'une acceptant d'ignorer ce que les tierces parties avaient à dire des négociations, et toutes les deux acceptant ce que les parties avaient à déclarer à propos d'elles-mêmes.

Convention provisoire (non ratifiée)

Les extraits textuels des décisions dénotent l'existence d'un débat entre arbitres pour savoir si les conditions d'une convention provisoire acceptée par les négociateurs mais rejetée par leurs mandants peuvent être admises comme preuves et être utilisées pour rendre une décision.

Certains arbitres semblent admettre cette preuve et également lui donner du poids pour rendre leurs décisions. Mais une autre école professe une position diamétralement opposée. Pour elle, les conventions provisoires rejetées: (1) n'ont aucune place dans la procédure d'arbitrage, (2) ne sont pas admises devant un tribunal, (3) ne constituent pas de négociations faites de mauvaise foi, et (4) ne portent aucun préjudice aux droits des tierces parties. L'opinion d'une des parties selon laquelle les conditions d'une convention provisoire rejetée devraient former une base à partir de laquelle les conditions peuvent être améliorées uniquement par arbitrage, serait pour cette dernière école une "dynamique non satisfaisante". Au contraire, une convention provisoire rejetée peut avoir pour conséquence que ses conditions ne réapparaîtront plus jamais à la table des négociations, et que l'arbitrage pourrait produire des résultats moins favorables.

Les raisons invoquées pour refuser les informations provenant d'une convention provisoire rejetée sont persuasives. Le lecteur trouvera d'autres points de vue dans les références à des cas ne concernant pas des enseignants cités dans la décision de 1980-81 pour les Ecoles Elémentaires de Peel.

Sources des données

La plupart des décisions traitant de cette question estiment que l'arbitre n'examinera que les preuves présentées par les parties. Il n'agira donc pas de manière indépendante envers les observations et positions des parties, et il n'entreprendra pas d'enquête séparée pour arriver au résultat qu'il juge approprié.

Dans deux cas au moins les arbitres indiquent leur intention de se servir de toutes les données qu'ils peuvent trouver à la Commission des Relations de Travail en Education. Un autre arbitre note que ces données ont l'avantage de tenter de juger ce que les parties pourraient avoir conclu de leur propre gré.

Une décision note que l'arbitre doit examiner toute la législation applicable traitant des litiges à résoudre, qu'elle ait été citée ou non par les parties, et qu'il a le droit d'interroger les parties et de leur demander des informations supplémentaires.

La décision rendue en 1979-80 pour les C.E.S.C. d'Ottawa traite de l'opposition à la majorité. L'arbitre avait demandé certains renseignements aux parties. Comme ceux qu'il obtint étaient insuffisants et qu'on lui répondit que les autres n'étaient pas disponibles, il se demanda s'il était possible de consulter d'autres sources. Malgré la méthode traditionnelle qui n'accepte que les preuves présentées par les parties, l'arbitre conclut après avoir analysé la *Loi sur les négociations collectives entre conseils scolaires et enseignants* et la *Loi d'interprétation*, que " ... je suis tenu ... non seulement d'examiner le bien-fondé du cas tel qu'il m'a été soumis, mais de tenir compte de tous les éléments que je considère appropriés selon mon jugement... et que dans ces éléments il faut inclure les renseignements cités à

l'Article 60 de la Loi"[6] (c.-à-d. la Loi sur les Négociations collectives entre conseils scolaires et enseignants).

Questions de procédure diverses

La Loi exige qu'après que la décision a été rendue, les parties rédigent un document donnant effet à tous les points acceptés par elles et à la décision de l'arbitre ou du conseil d'arbitrage; elles doivent alors signer ce document, et celui-ci deviendra alors une convention. Si les parties s'abstiennent de respecter ces exigences, l'arbitre ou le conseil d'arbitrage devra s'en charger; le document alors sera censé constituer une convention exactement comme si elle avait été rédigée et signée par les parties. Il existe un cas où l'arbitre a dû signer le document; il est cité dans les extraits.

Dans un autre cas, une des partie s'était inquiétée du fait que l'arbitre, qui avait traité antérieurement d'autres situations, pouvait avoir un "préjugé en matière légale". Les extraits décrivent la procédure suivie par cet arbitre pour venir à bout de cette assertion, et les raisons qu'il donna dans sa décision.

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[6] La Commission des Relations de Travail en Education a pour tâche de rassembler les renseignements statistiques sur la réserve, la distribution, les activités professionnelles et les traitements des enseignants.

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QUESTIONS DE FOND

Dans l'arbitrage d'intérêts, les questions de fond sont les points contestés, tels qu'ils ont été présentés par les parties, qui devront être tranchés par l'arbitre ou le conseil d'arbitrage nommé et qui, après la décision, seront incorporés comme des conditions d'emploi dans une convention collective.

Le commentaire résumé ci-après est basé sur des vues d'arbitres sur les questions de fond qui figurent dans les extraits de décisions reproduits à la Section 3.

Critères (Généraux)

Plusieurs décisions contiennent des commentaires sur les critères généraux intéressant l'arbitrage de griefs, sans les relier à des litiges spécifiques. Ils tendent plutôt à être de nature très diverse, allant de considérations économiques au besoin de préserver le caractère permanent des relations entre les parties.

Certaines sections des décisions sont parfois consacrées à la perspective générale adoptée et emmêlées avec les sections traitant du rôle de l'arbitre. Le lecteur peut donc trouver des extraits traitant ces deux aspects simultanément.

Les arbitres utilisent le plus les critères généraux d'ordre économique comme: le climat économique du moment, l'importance des tendances générales dans les négociations entre enseignants et conseils scolaires, le point de vue selon lequel l'arbitrage n'est qu'un des aspects des négociations où, selon le cours général des événements, les changements ne sont introduits que progressivement et marginalement (c.-à-d. que tous les objectifs des négociations ne sont pas atteints en une seule série), et la notion que tous les litiges doivent finir par être considérés comme un seul ensemble. Il n'est pas rare de rencontrer des références à d'autres décisions expliquant la méthode générale de l'arbitrage ou donnant une liste de critères.

Certaines décisions toutefois citent des passages se rapportant à des questions non économiques comme les relations permanentes entre les parties, le rôle des enseignants et des institutions pédagogiques dans la société et le fait que les positions présentées ne sont pas nécessairement justifiées ou accentuées uniquement à la suite de la longueur des négociations précédant l'arbitrage.

Traitements: Grille des Enseignants

Comme le dénote le Tableau 3, c'est la grille des traitements des enseignants qui fait l'objet du plus grand nombre de litiges soumis à l'arbitrage (82.6% de toutes les décisions disponibles pour l'analyse). Le lecteur ne s'étonnera donc pas si cette série d'extraits est la plus volumineuse.

Les arbitres ont utilisé des critères différents, pratiquement tous de nature économique ou financière. L'examen des décisions ne permet pas de dégager avec précision la mesure dans laquelle chaque critère a pesé sur la décision (de nombreuses décisions en citent plusieurs). Le Tableau ci-après indique par ordre de fréquence, les critères présents dans les 46 décisions disponibles pour l'analyse.

GRILLE DES TRAITEMENTS DES ENSEIGNANTS: CRITERES MENTIONNES DANS LES DECISIONS D'ARBITRAGE D'INTERETS ET LEUR FREQUENCE

Critères	Nombre de décisions
Règlement d'après comparaison avec régions voisines/analogues	30
Tendances générales des conventions conclues dans la province entre enseignants et conseils scolaires	23
Comparaison avec secteur opposé dans le même conseil scolaire ou avec d'autres conseils géographiquement équivalents	22
Indice des prix à la consommation, cherté de la vie, inflation	18

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Professions non enseignantes (pour inclure des références à l'Indice des gains pour l'ensemble des activités économiques* et/ou à d'autres indices de productivité)	17
Rémunération globale	12
Climat économique du jour	10
Capacité de payer	10
Intérêt ou bien-être public (peut être lié à la capacité de payer)	9
Collèges communautaires/Universités	8
Demeurer dans les limites établies par les parties	7
Référence au rapport d'enquête	7
Recrutement/Maintien du personnel	2

Nous avons également trouvé d'autres critères déjà notés: rapports permanents entre les parties, conventions provisoires (non ratifiées) et référence à des critères utilisés dans d'autres décisions ou rapports.

Traitements: Directeurs et Sous-Directeurs

Ici également les montants font assez souvent l'objet de litiges. Plus que pour la grille des enseignants, les arbitres semblent ici beaucoup plus enclins à simplement spécifier le ou les montants ou augmentations sans donner d'explications.

Voici la liste des critères et leurs fréquences figurant dans les décisions disponibles.

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* Moyenne des gains hebdomandaires calculée et publiée par Statistique Canada

TRAITEMENTS DES DIRECTEURS ET DES SOUS-DIRECTEURS: CRITERES MENTIONNES DANS LES DECISIONS D'ARBITRAGE OU D'INTERETS ET LEURS FREQUENCES

Critères	Nombre des décisions
Règlements d'après comparaison avec région voisine ou analogue (pour inclure des rapports avec des situations précédentes)	10
Rapport avec traitement maximum d'enseignant (peut être exprimé par le montant ou le pourcentage)	4
Poste ne pouvant être occupé avant un an	2
Nature du contexte dans lequel les tâches sont exécutées (par ex. accès à divers spécialistes ou à d'autres personnes avec emploi similaire, rapport entre directeurs/sous-directeurs et personnel / élèves	1

Allocations: Cherté de la Vie (COLA)

Plusieurs critères ont été utilisés. Comme pour les traitements, les extraits mentionnent des comparaisons avec le secteur opposé du conseil scolaire ou des conseils scolaires voisins, les tendances générales dans les négociations entre enseignants et conseils, la capacité de payer et l'aspect global des rémunérations.

En général, on note des hésitations à accorder une clause COLA dans les conventions d'un an; en effet les parties ne devront pas attendre trop longtemps avant de pouvoir négocier un changement inattendu dans le coût de la vie. Dans ces cas, les prévisions concernant l'inflation pourront être incorporées dans les positions adoptées pour les traitements. Le même argument est utilisé également pour les décisions rendues tard dans l'année en insistant sur le fait que les changements dans le coût de la vie sont largement connus à cette époque.

Allocations: Diplôme

Certains critères servant à déterminer les traitements sont appliqués également aux allocations pour diplôme: comparaison avec conseils analogues ou voisins, tendances générales dans les négociations entre conseils scolaires et enseignants et la perspective de la rémunération globale.

D'autres facteurs également entrent en ligne de compte:

1. l'allocation peut avoir un rapport avec certaines mesures comme celles qui servent à attirer des candidats à un emploi ou à les y maintenir,

2. des qualifications professionnelles plus poussées se traduisent dans une certaine mesure par un enseignement ou un environnement d'étude de meilleure qualité, et

3. le rejet du principe selon lequel les augmentations des allocations devraient suivre aveuglément celles de la grille des traitements, en faveur d'un autre principe selon lequel elles devraient plutôt être assujetties à des ajustements en même temps que les ajustements imposés par des modifications dans les exigences et les tâches de l'emploi.

Allocations: Postes à responsabilités
(autres que directeurs et sous-directeurs)

Plus peut-être que pour les autres allocations, le caractère double de cette allocation monte à la surface. Le problème est de savoir si le supplément payé pour un poste à responsabilités est strictement une question de traitement ou une question d'exigences et de conditions propres à un emploi déterminé. Selon le point de vue adopté,des considérations quelque peu différentes peuvent servir à déterminer les modifications dans ces allocations et leur mesure. L'analogie stricte avec les traitements tendrait à insister sur les analyses des tendances, les renseignements sur des situations comparables, la cherté de la vie etc.;l'autre école professe que les changements dans ces allocations doivent être basés uniquement sur les changements dans les exigences et conditions de l'emploi.

Les extraits montrent que dans ce domaine les conclusions sont différentes. Celles qui semblent le traiter comme un problème de traitement insistent davantage sur des critères d'ordre économique plus traditionnels.

Nous avons noté également d'autres critères, comme par exemple:

1. dans la plupart des régions rurales, les personnes qui occupent ces postes ne disposent pas de la même assistance et du même matériel que dans les grands centres et elles doivent recourir davantage à leurs qualités de commandement et à leur initiative,

2. le coût d'une augmentation sera relativement faible, mais elle peut avoir une influence importante sur la qualité de l'enseignement,

3. le montant de l'allocation ne doit pas être séparé de la proportion des personnes auxquelles elle est accordée,

4. l'importance que ces allocations ont traditionnellement revêtue pour les parties, et

5. l'argument selon lequel les augmentation sont justifiées pour la raison que le ou les montants sont restés invariables depuis 5 ans, ignore les concessions mutuelles faites lors des négociations précédentes et qui étaient manifestement satisfaisantes pour les deux parties.

Gratification de Retraite

Chaque extrait concernant ce problème indique que l'arbitre a maintenu le statu quo, en déclarant clairement qu'il est préférable que les parties décident elles-mêmes au moyen de négociations.

Le fait que cet avantage existe depuis de nombreuses années semble être la principale raison qui incite les arbitres à refuser de décider ce que les parties n'ont pas voulu ou n'ont pas pu accomplir elles-mêmes.

Ceci ne signifie pas que tous les arbitres envisagent ces plans de gratification de retraite d'un oeil favorable. Ils reconnaissent les risques que les frais représentent à long terme pour l'employeur, et certains suggèrent d'introduire pour tous les employés des mesures en matière de santé plus adéquates à court et à long termes.

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Pour ces gratifications, certaines décisions tiennent compte du nombre de personnes touchées, d'autres décisions analogues et des résultats de négociations entre le même employeur et d'autres groupes d'employés; ces facteurs ne sont cependant pas un argument suffisamment décisif pour inciter les arbitres à injecter dans les relations entre les parties ce qu'ils considèrent apparemment comme une modification fondamentale.

Avantages sociaux

Des critères d'ordre économique plus traditionnels surgissent encore une fois dans les questions d'avantages sociaux (assurés).

Les décisions mentionnent des résultats généraux de négociations entre enseignants et conseils scolaires, des conseils régionaux plus spécifiquement comparables à des conseils voisins ou analogues (y compris le secteur opposé dans le même conseil scolaire) et des groupes non enseignants.

Le critère le plus fréquent est celui de la solution globale. Il n'est pas rare de trouver des déclarations indiquant le peu d'inclination à modifier substantiellement la partie de la convention collective consacrée aux avantages à cause des autres aspects de la décision de l'arbitre (particulièrement pour les traitements).

En outre, une autre notion se dégage de deux décisions: les arbitres hésitent à préciser un régime ou un assureur déterminé; ils préfèrent laisser aux parties le soin de négocier cette question.

Une décision (Northumberland et Newcastle Sec. 1978-79) traite de quelques problèmes peu fréquents: avantages des enseignants à temps partiel, participation au choix du nouvel assureur, et ristournes pour l'assurance-chômage.

Congés

Les statistiques de la Section 1 montrent que les congés font rarement l'objet d'un litige. Aucune tendance n'a pu être dégagée, le nombre de décisions affectant chaque type de congé étant trop faible.

Le lecteur intéressé trouvera des extraits traitant des types de congé suivants:

1. Régime de congé avec traitement différé,
2. Affaires de fédération ,
3. Sabbatique, et
4. Accumulation de congé-maladie.

Volume de travail

Les questions de volume de travail concernent le nombre d'heures que l'enseignant doit consacrer chaque jour à l'enseignement proprement dit, à la surveillance, à la préparation etc.

Quelques décisions contiennent des commentaires qui ont été repris dans les extraits. Les arbitres y notent que:

1. les parties sont le mieux qualifiées pour négocier et résoudre ces problèmes elles-mêmes;
2. étant donné le peu, pour ne pas dire l'absence, d'indications provenant de litiges précédents, rien n'indique le besoin de changement, et
3. si les négociations précédentes ont pris fin à une époque tardive de l'année, la clause ne sera pas longtemps en vigueur et il ne sera pas possible d'en juger l'effet; les changements ne seront donc par conséquent pas accordés.

Rapport élèves-enseignants/Dotation en personnel

Comme nous l'avons déjà noté, une proportion relativement importante d'arbitres (43.5%) a dû traiter certains problèmes de dotation en personnel. De tous les domaines des négociations, ce sont peut-être les problèmes de la dotation en personnel qui sont liés dans la plus grande mesure à des éléments tels la complexité des problèmes, l'importance du contexte local, et l'opposition entre la philosophie des conseils scolaires en matière de droits de la direction d'une part et la possibilité des enseignants d'exercer un rôle pour déterminer leurs conditions d'emploi d'autre part.

A cause d'autres implications comme les réactions émotionnelles, les frais et la sécurité de l'emploi, il est assez surprenant de constater qu'un aussi grand nombre de cas ont dû être réglés par une tierce partie.

Dans une situation [Peel Secondaires, 1976-77], la question principale était de savoir si les enseignants des programmes d'éducation spéciale devaient être inclus ou non dans le rapport général entre élèves et enseignants. L'extrait en question traite simultanément des pratiques existantes dans le conseil scolaire, de statistiques comparant le personnel au personnel d'autres conseils, et de l'argument selon lequel les programmes d'éducation spéciale doivent être clairement identifiables dans les frais totaux. Cet extrait donne ainsi un aperçu du problème de la dotation en personnel d'un secteur secondaire et il en reflète la complexité sans en sacrifier la clarté.

Dans un autre cas quelque peu spécial [Muskoka Secondaires, 1978-79], le seul point discuté était s'il fallait incorporer intégralement la clause du rapport élèves-enseignants dans la convention collective, si la convention devait la mentionner comme un règlement du conseil scolaire, ou si elle devait être totalement absente de la convention collective. Toutes les autres questions avaient été réglées, y compris les détails de la clause du rapport élèves-enseignants.

Le conseil d'arbitrage avait commencé par la solution du règlement du conseil, pressentant la possibilité d'une situation ambiguë susceptible de soulever des problèmes juridiques. L'arbitre statua que si une obligation devait exister entre les parties, elle devait être exprimée clairement dans la convention.

Le conseil d'arbitrage avait pris sa décision en se fondant sur les éléments suivants:

1. le problème est-il susceptible d'être négocié?

2. la présence de pareilles clauses dans les conventions n'est pas inhabituelle;

3. le rapport élèves-enseignants ne s'applique pas uniquement au problème des règlements en éducation qui relèvent au moins en partie, des droits de la direction. Ce rapport touche à d'autres domaines comme le volume de travail et la sécurité de l'emploi;

4. le corps électoral avait aussi bien l'occasion d'exprimer ses points de vue sur la conduite du conseil scolaire à la table des négociations, qu'il pouvait le faire pour toutes les autres activités et règlements du conseil;

5. la solution de faire inclure la clause dans la convention permettrait mieux que les autres de faire un examen plus complet et équitable du problème;

6. le fait que les parties étaient entièrement d'accord sur la clause sauf sur son placement et que d'autre part son fond n'était pas obscur, renforce le point de vue qu'elle devait être incorporée dans la convention;

7. comme actuellement le problème du déclin dans les inscriptions d'élèves n'est pas urgent, il est logique de le résoudre maintenant en même temps que ce problème subsidiaire d'une manière plus logique et plus pratique.

Dans les autres cas cités, les arbitres font des exposés des motifs très divers. Il est pratiquement certain que dans chaque mention de questions de dotation en personnel, les conseils scolaires discutent des frais et des droits de la direction. Les enseignants rétorquent souvent en s'appuyant sur la qualité de l'enseignement et leur participation dans des domaines critiques tels le volume de travail et la sécurité de l'emploi.

Voici les points principaux des raisons avancées par les arbitres pour aboutir à une conclusion:

1. des modifications de la ou des années précédentes: a) sont satisfaisantes ou b) ne sont pas encore suffisamment longtemps en vigueur pour pouvoir juger leur effet;

2. les frais supplémentaires qu'entraîneraient les changements recherchés ne sont pas justifiés à la lumière des autres aspects de la décision;

3. si les parties n'ont pas fait d'efforts sérieux pour négocier ces litiges, l'arbitre n'est pas disposé à modifier le statu quo dans un sujet aussi fondamental;

4. si le conseil scolaire demande d'augmenter le rapport élèves-enseignants, il doit indiquer - en plus des économies réalisables - que ni les élèves ni les programmes en seraient affectés; il est fort important également qu'il soutienne sa proposition par une preuve;

5. si les écrits et les recherches traitant de l'amélioration des conditions de travail et de son effet sur les élèves n'ont pas été jugés concluants, d'autres facteurs comme les frais acquerront une importance plus grande;

6. inclure dans une convention que ce qui existe en pratique est raisonnable;

7. une clause de rapport élèves-enseignants dans une convention interdit au conseil scolaire de toucher arbitrairement à la sécurité de l'emploi, tout en instituant un rapport connu entre le nombre des enseignants et celui des élèves;

8. une clause négociée librement ne pourrait être modifiée par l'arbitre que pour des raisons extrêmement convaincantes;

9. la partie désireuse d'introduire une modification doit être capable de présenter des preuves qui en démontrent le besoin; les arbitres ne peuvent agir que sur la base de preuves;

10. Dans certains milieux (par ex. un petit conseil rural offrant des programmes à la fois en français et en anglais) il est fort important que le conseil scolaire dispose de suffisamment de souplesse pour ses décisions concernant les programmes.

Surnombre/Excédent

Comme pour les conditions de travail, le problème du surnombre/excédent suscite souvent des prises de position opposées entre les droits de la direction et les conditions d'emploi recherchées par les employés.

Les commentaires des arbitres contiennent peu d'éléments permettant d'établir une comparaison. Le critère primordial qui est en général passé sous silence semble être l'impartialité ou l'équité. Il est souvent mentionné dans le sens de solution raisonnable et pratique, et en ce qui concerne le surnombre/excédent, des arbitres:

1. estiment qu'il est raisonnable que la convention collective protège les emplois dans une certaine mesure sans toutefois accorder la sécurité absolue au personnel;

2. établissement une distinction dans le degré de sécurité d'emploi accordée aux enseignants avec contrat permanent et ceux ayant un contrat provisoire;

3. ne sont pas nécessairement disposés à inclure dans la convention collective des éléments qui sont déjà garantis par la loi;

4. déclarent que les conseils scolaires doivent disposer d'une certaine souplesse et que le problème du surnombre/excédent pourrait jugé exclusivement sur la base de l'ancienneté;

5. exigent un argument solide avant de modifier le statu quo; l'arbitrage est plus indiqué pour les cas pratiques que pour les problèmes hypothétiques.

Ecole du soir/été

La question de savoir si les cas concernant les cours du soir et d'été sont susceptibles d'être arbitrés a fait l'objet de certains débats. En d'autres termes, le problème des emplois dans l'enseignement du soir et d'été sont-ils réglementés par la Loi sur les négociations collectives entre conseils scolaires et enseignants? Les extraits indiquent des divergences dans les points de vue des arbitres. L'absence de documentation contraignante et le peu de conventions contenant des clauses de ce genre sont des facteurs qui incitent les arbitres à ne pas inclure de nouvelles clauses ni à modifier celles qui existent déjà.

Dans deux décisions les arbitres ont estimé que l'enseignement du soir et d'été n'était pas comparable au programme normal des écoles du jour.

Dans deux cas l'enseignement du soir et d'été a été considéré comme un moyen pour adoucir le problème du déclin dans les inscriptions. Un des arbitres a suggéré de résoudre le cas par un règlement, et l'autre à trancher en faveur d'une clause imposant au conseil de faire tout ce qui était en son pouvoir, mais en déclarant que les conditions de ces emplois n'étaient pas du domaine de la convention collective.

Questions de fond diverses

Prélèvement local des cotisations: L'extrait mentionné traite essentiellement d'une discussion cherchant à déterminer si le prélèvement des négociations est susceptible et arbitrable, et si les sections affiliées ont légalement le droit d'opérer ce prélèvement.

Pratiques existantes: Les deux extraits que nous citons suggèrent qu'une clause de ce genre serait des plus inhabituelles, qu'elle exercerait une influence marquée sur la capacité de gérer de l'employeur, et que le problème devait être décidé par les parties.

Griefs: Dans les deux extraits mentionnés, l'arbitre traite en particulier des problèmes suivants:

1. si un grief doit être tranché en faveur d'une des parties si l'autre n'a pas respecté les délais,

2. si une procédure intentée pour un grief doit déclarer expressément qu'elle ne peut contenir aucun élément interdisant à un enseignant de chercher réparation par voie légale,

3. une requête qui donnerait la possibilité de régler le grief par médiation,

4. autoriser la section affiliée de poursuivre un grief présenté mais ultérieurement abandonné par une personne individuelle.

Juste cause: En matière de renvoi et de mesure disciplinaire, les clauses de juste cause sont courantes dans les conventions du secteur privé et relativement fréquentes en éducation. L'équité élémentaire exige qu'un employé dont les intérêts sont menacés soit capable de se faire entendre devant une certaine forme de tribune qui entendrait et évaluerait les positions des parties.

Toutefois, l'introduction du terme "rétrogradation" peut entraîner des problèmes et il a été omis dans l'extrait cité.

Paiement de somme forfaitaire/argent comptant: Trois extraits traitent de ce problème. L'un prétend que le paiement devrait servir de prime pour récompenser les enseignants qui après une grève avaient fait l'effort d'aider les élèves affectés (c.-à-d. en augmentant leur productivité).

Dans un autre extrait, le paiement devrait compenser les enseignants des mauvaises conditions de la convention précédente. Enfin dans la troisième, l'arbitre déclara qu'avec ou sans intention, un arrangement de ce genre devait être considéré comme une mesure de protestation contre la partie effectuant le paiement.

Aucune demande de paiement de somme forfaitaire ou d'argent comptant ne fut accordée.

Postes à responsabilités (Création de): L'arbitre estima qu'il est raisonnable, en raison des positions des parties, d'exiger que la structure actuelle de ces positions devait rester essentiellement telle qu'elle était avant la décision.

Jours pour perfectionnement professionnel: L'arbitre décida que ces questions devaient être réglées par le règlement provincial existant.

Mesures disciplinaires: A plusieurs occasions les arbitres ont été priés d'inclure dans leur décision une clause interdisant les mesures disciplinaires soit: (1) contre la partie ayant fait usage d'un moyen de pression légal ou (2) à l'intérieur de la partie des enseignants en lui interdisant de prendre des mesures disciplinaires contre les membres n'ayant pas participé à un ou à plusieurs aspects d'une grève.

Les décisions indiquent que les arbitres traiteront ce problème s'il est applicable à mesure égale aux deux parties, mais qu'ils refuseront de s'immiscer dans les problèmes internes d'un syndicat.

Terme de la convention: les enseignants avaient demandé aux arbitres que leur décision n'ait vigueur que pendant la période la plus brève possible. Leur argument est qu'au-delà de cette période ils n'avaient pas accès aux dispositions de la Loi.

Les conseils scolaires semblent avoir adopté une position inverse. Ils demandent que le terme de la convention résultante soit plus long.

Dans les deux extraits cités (tous deux traitant de cas ayant impliqué un moyen de pression) les arbitres optèrent pour le terme plus long en espérant que les relations se stabiliseraient et deviendraient meilleures, et que les programmes des élèves bénéficieraient d'une longue période sans grève.

Expérience en métier (Reconnaissance de): voir extrait.

Transfert: L'extrait que nous citons traite d'une demande des enseignants pour obtenir trente (30) jours de préavis. Le conseil scolaire avait objecté en déclarant qu'un tel délai ne serait pas possible en certaines circonstances. L'arbitre élabora une solution de compromis prévoyant que la décision de transfert devait être accompagnée d'un préavis de trente jours en circonstances normales, et plus bref en cas de force majeure.

SECTION 3

Cette section de la monographie contient des transcriptions littérales d'extraits provenant de décisions d'arbitrage d'intérêts. Les pages 46 à 83 citent des questions de procédure, et les pages 84 à 264 des questions de fond.

Dans chaque section les extraits ont été groupés selon les sujets indiqués au début de la Section 2. Chaque extrait est précédé d'un titre qui note:

1. les négociations particulières qui concernent la décision d'arbitrage,
2. l'année de convention (la première si son terme est de plus d'un an) à laquelle la décision s'applique,
3. le nom de famille de l'arbitre unique ou du président du conseil d'arbitrage intéressé, et
4. la ou les page(s) de la décision d'où provient l'extrait.

Les lecteurs sont priés de noter que les extraits provenant de décisions rendues avant 1981-82 et qui se réfèrent à un article spécifique de la Loi sur les négociations collectives entre conseils scolaires et enseignants, étaient basées sur la Loi telle qu'elle fut adoptée à l'origine en 1975. Ces références ne sont toutefois plus indiquées à la suite des amendements votés en 1980. Dans la plupart des cas, l'article approprié sera celui qui précède immédiatement l'article cité dans l'extrait [par ex. L'Article 36(1) cité dans un extrait pourra être trouvé dans la version actuelle de la Loi à l'Article 35(1)].

ROLE DE L'ARBITRE

Metropolitan Toronto Secondary, 1975-76 - DUBIN - pp.6-9

One cannot help but feel that there was a failure to resolve most truly contentious items. There can be no doubt that the best contract of employment is one which is agreed to by the parties themselves. Legislated arbitration is not uncommon in disputes such as this in the United States, and compulsory arbitration has frequently been invoked in industrial disputes in Canada as well. In both United States and Canada experience has shown that legislated arbitration is most effective when the matters to be resolved are limited, and when most of the contentious items have been agreed upon by the parties. One of the difficulties in the arbitration process in the past has been the tendency of an arbitrator to arrive at an award which is a compromise of the respective positions of the parties. The effect of that has been to encourage the parties to keep all the contentious items on the table and to discourage them from making a sincere effort to resolve items by themselves. As is pointed out in an article by Gene Swimmer in (1975), Industrial Relations Indstrielles, Vol. 30, No. 3, at p. 533:

> "When a contract dispute goes to compulsory arbitration, the temptation for the arbitrator to compromise is great. He appears fair by giving some concessions to both sides and does not alienate either of the parties, avoiding the possibility that he won't be called in as an arbitrator at some later date. Because both the union and management are aware of the tendency to compromise, neither side will likely make real concessions during the negotiations. In other words, if arbitrators split the difference, the more outrageous your side's final position the more likely you will get a better settlement."

A similar point of view was expressed by Steven B. Rynecki in Journal of Law-Education, Vol. 4, No. 4, 645 at pp. 650-1, where he states as follows:

> "Because the employee organization is primarily the demanding party in negotiations, management feels that with compulsory arbitration as an end result, true collective bargaining will not occur if the employee representative feels ultimate victory lies in the hands of the arbitrator rather than at the table. This perception is caused by the belief that arbitrators tend to 'split the difference' between the parties positions.

> Employee representatives can strive for "more, more, more" at the bargaining table and then go to an arbitrator for even more. This result, management feels, is contrary to the precept that bargaining must be done at the table, not by a third party neutral."

When an arbitrator "splits the difference" he assumes the role of a mediator rather than that of an arbitrator. At the commencement of these proceedings, I announced to the parties that I would make no effort to mediate the matters in dispute since I thought it was inappropriate to do so on an arbitration. There may be cases in which the result arrived at by an arbitrator properly results in an award which falls between the respective positions of the parties. Such a result should only be arrived at when the evidence accepted by the arbitrator supports such a finding. If such a result is arrived at for any other reason, the arbitrator is not acting judicially.

It is to be observed that the function which I have been directed to perform is that of an arbitrator. Although an arbitrator need not be a judge, an arbitrator must act judically, and it is his duty to come to a decision based upon the merits of the case as submitted. An arbitrator is not free to act independently of the positions and submissions of the parties. His role is quite different from that of a Royal Commissioner, or of a person who has been given a mandate to arrive at any result that he thinks appropriate as a result of his own independent investigation. In the context of the matters before me, the parties have narrowed the issue with respect to each matter in dispute and have withdrawn from my consideration a determination of the issues in a manner which would fall below or above what has been submitted, nor can I interfere with matters which the parties had expressly agreed upon.

Kirkland Lake Secondary, 1975-76 - JOHNSTON - pp. 10-13

Shortly before the hearing in this matter, an arbitration award dated March 3, 1976 was given by The Honourable Mr. Justice Dubin serving as a sole arbitrator under Bill 1, The Metropolitan Toronto Boards of Education and Teachers Disputes Act, 1976. In that award Mr. Justice Dubin described his role as arbitrator (as he defined it as opposed to that of mediator) as follows (pp.7-9):

> "One of the difficulties in the arbitration process in the past has been the tendency of an arbitrator to arrive at an award which is a compromise of the respective positions of the parties. The effect of that has been to encourage the parties to keep all the contentious items on the table and to discourage them from making a sincere effort to resolve items by themselves.....

> When an arbitrator "splits the difference" he assumes the role of a mediator rather than that of an arbitrator. At the commencement of these proceedings, I announced to the parties that I would make no effort to mediate the matters in dispute since I thought it was inappropriate to do so on an arbitration. There may be cases in which the result arrived at by an arbitrator properly results in an award which falls between the respective positions of the parties. Such a result should only be arrived at when the evidence accepted by the arbitrator supports such a finding. If such a result is arrived at for any other reason, the arbitrator is not acting judicially.
>
> It is to be observed that the function which I have been directed to perform is that of an arbitrator. Although an arbitrator need not be a judge, an arbitrator must act judicially, and it is his duty to come to a decision based upon the merits of the case as submitted. An arbitrator is not free to act independently of the parties. His role is quite different from that of a Royal Commissioner, or of a person who has been given a mandate to arrive at any result which he thinks appropriate as a result of his own independent investigation. In the context of the matters before me, the parties have narrowed the issue with respect to each matter in dispute and have withdrawn from my consideration a determination of the issues in a manner which would fall below or above what has been submitted, nor can I interfere with matters which the parties had expressly agreed upon." (Underlining added)

These passages are open to at least two interpretations. The narrow interpretation is that the arbitrator is to perform a final offer selection on each item in dispute. The broad interpretation, supported by the underlined passage above, is that the arbitrator may make an award which falls between the parties positions provided there is evidence to support it.

Upon reflection, I believe the narrow interpretation confines the arbitrator too rigidly. Moreover, in my view, the broad interpretation should be seen as embracing the entire package of items in dispute and not just each particular item in dispute. To make this clear by way of example the arbitrator might find that an award on one item in dispute beyond the range established by the parties' offer and request was appropriate because it struck an appropriate balance and dovetailed with an award he had made on another item in dispute. Again to make clear my understanding

of the broad interpretation, an arbitrator would be acting properly on evidence before him if for example one party offered a salary of $11,000 a year and the other party requested $12,000 a year and the evidence of most relevant comparable salaries established a range of $11,600 to $12,200 with a concentration in the range of $11,700 to $11,850. In my view if the arbitrator made a salary award of $11,775 a year in those circumstances he would have done so on the basis of evidence before him even though there was no single piece of evidence which showed a salary of the precise dollar amount of $11,775 a year.

Because I knew the parties in this arbitration had considered Mr. Justice Dubin's award and because I was uncertain what interpretation they would place on it and because Bill 2 gives no precise guidance on the point, at the outset of the hearing I articulated the narrow interpretation of Mr. Justice Dubin's conception of the role of an arbitrator with an illustrative example. In response the parties mutually agreed that I should view my function broadly. In particular they submitted that I should be free to depart from their proposals, to strike a middle position between extremes, or even to make an award lower than the minimum offered or higher than the maximum requested with respect to any item in dispute.

On the basis of this mutual submission and my own understanding of the arbitrator's role and responsibility I have viewed my role as at least as flexible as the broad interpretation set out above.

Windsor Secondary, 1975-76 - FERGUSON - pp.6-7

I have had an opportunity to review the decision of The Honourable Charles Dubin which dealt with an arbitration concerning the Metropolitan Toronto School Boards. Having the highest regard and respect for Mr. Justice Dubin, I consider it appropriate for me to heed some of the comments contained in his decision of March 3, 1976. His Lordship expressed the opinion that an efficient school administration is dependant upon a mutual understanding and respect between teachers and students, teachers and parents and teachers and boards of education. This opinion should now be directed to those responsible for school administration in Windsor.

I am also mindful of other comments of Mr. Justice Dubin with respect to the role of the arbitrator. On other occasions I, too, have emphasized that an arbitrator, acting judicially, must adjudicate based on the evidence which is presented to him. As His Lordship points out, it is the arbitrator's duty to come to a decision based on the merits of the case as submitted. It is recognized by His Lordship and many others that one of the difficulties in the arbitration process has been the tendency of some arbitrators to arrive at an award which is a compromise of the respective positions of the parties. This

conclusion must be weighed when also considering the obligation on the arbitrator to produce an award in an interest dispute which he believes to be fair and equitable. It is true that whenever an arbitrator "splits the difference", he appears to have assumed the role of a mediator, rather than of an arbitrator. As Mr. Justice Dubin has stated, there may be cases in which the result arrived at by an arbitrator does in fact result in an award which falls between the respective positions of the two parties. However, such a result must only be arrived at when the evidence accepted by the arbitrator supports such a finding. If the result is arrived at for any other reason, then the arbitrator is not acting judicially. Above all, the arbitrator must not in any way attempt to act on a basis independent of the positions and submissions of the parties because his mandate does not permit him to arrive at a result which he may consider appropriate as a result of his own investigation, or as a result of his involvement in other cases..

Peel Secondary, 1976-77 - BECK - [illegible] pp.4-6

The appropriate role for an arbitrator was considered by Mr. Justice Dubin acting as the sole arbitrator under Bill 1, The Metropolitan Toronto Boards of Education and Teachers Dispute Act, 1976. Mr. Justice Dubin's description of the proper role to be played by an arbitrator has been more recently considered by Dean David L. Johnston in his Award in the Kirkland Lake arbitration dated May 3rd, 1976. In the Metro Toronto Award, Mr. Justice Dubin emphasized that it is the function of an arbitrator to come to a decision based on the merits of the case as submitted. This is a quite different role than that of a mediator who attempts to bring the parties together in an agreement and in so doing may encourage them to "split the difference". Mr. Justice Dubin remarked that there may be cases in which the result arrived at by an arbitrator properly results in an award which falls between the respective positions of the parties. But he was very clear that "such results should only be arrived at when the evidence accepted by the arbitrator supports such a finding. If such a result is arrived at for any other reason, the arbitrator is not acting judicially".

Dean Johnston in the Kirkland Lake Award interpreted Mr. Justice Dubin's remarks as allowing the arbitrator to make an award "which falls between the parties' positions provided there is evidence to support it". Most importantly, Dean Johnston emphasized that this broad interpretation "should be seen as embracing the entire package of items in dispute and not just each particular item in dispute". He gave as an example of this the fact that an arbitrator might well make an award on one item in dispute beyond the range established by the parties' offer and demand "that was appropriate because it struck an appropriate balance and dovetailed with an award in another item in dispute".

I concur with Dean Johnston's interpretation of Mr. Justice Dubin's remark in the Metro Toronto case. That is an arbitrator looks at the entire case before him and not just single items in isolation. The determination of what is equitable in any one item is bound to affect the equities of other single items, which taken as a whole affect the equity of the entire package. This may well result as to any one item in an award that is either higher or lower than the parties' offer or demands. The function of a mediator-arbitrator when he is engaged in the arbitration aspect of the case is somewhat more difficult, although clearly at the latter stage he is acting as an arbitrator and must act judicially -- that is he must come to a decision based on the merits of the cases submitted. However, it must be recognized that prior to engaging in arbitration, the arbitrator was acting as a mediator and was attempting to bring the parties together. During the course of such a mediation, the mediator is very likely, at certain points of the process, to indicate to the parties, either in a general or sometimes in a specific way, what he regards as an equitable resolution of particular matters. This is bound to have an influence on the parties during the mediation when they know that the mediator may become an arbitrator. By the same token, what happens in mediation, and the facts the arbitrator learns and the opinions that he forms during the mediation process, are bound to influence him when he is acting as an arbitrator.

I was conscious of this and discussed the rather unique situation with the parties at the outset. It was made very clear to both sides that if the matter did eventually end in arbitration that I would in no way consider myself bound by any positions either tentative or final taken by the parties during the mediation, nor should they be under the impression that any opinions I expressed during the mediation would necessarily turn out to be my opinions when acting as arbitrator. I was to be completely free to look at the matters at large when acting as arbitrator.

In summary, the role of a mediator-arbitrator is a unique and somewhat difficult one, but the parties must realize, and the arbitrator must accept, that he must act as an arbitrator when the matter finally comes to arbitration and act in a manner as set out by Mr. Justice Dubin in the Toronto case, and as commented upon by Dean Johnson in the Kirkland Lake case.

Lambton Elementary, 1977-78 - KENNEDY - pp.3-4

Before dealing with the specific proposals and our Awards with respect to them, we think it would be useful to make some general comments as to the approach we have taken in settling the outstanding issues in view of the fact that the primary dispute between the parties does, as previously stated, involve principally compensation. The approaches and factors to be considered by a Board of Arbitration in this type of dispute have already been analyzed with some particularity by numerous arbitrators, and we do not consider it productive to reiterate those statements at length in this Award. Reference was made to various arbitral precedents in the material submitted by the parties, and we think it sufficient simply to refer to the awards of the Honourable Mr. Justice Dubin dealing with the secondary schools in the Municipality of Metropolitan Toronto, the award of Dean Johnson in dealing with the Kirkland Lake dispute and the award of Mr. Owen Shime in determining the B.C. Railway dispute. Those awards all set out the consideration to be followed by a Board of Arbitration in an interest dispute and give assistance in determining proper comparables as a guide to existing levels of compensation for employees of comparable experience and qualification in other sectors of the economy. It is to be noted, however, that an application of the principles and factors set out in those awards does not lead to any sort of objectively determined and mathematically ascertained level of compensation, but rather, at best, can only develop a range of reasonableness within which the appropriate salary level will lie. It must in the end fall to a subjective determination as to which factors are to be given the most weight in any specific set of circumstances; and on this Arbitration, we have found that there are, in fact, specific and compelling features upon which we have relied in reaching our determinations.

Huron Secondary, 1977-78 - JOHNSTON - pp.4-5

I have commented in an earlier interest arbitration award (Sault Ste. Marie Board of Education, May, 1978) on the task of the interest dispute arbitrator. It may be of assistance to the present parties to repeat some of those comments.

"The task of an interest arbitrator is a difficult one. His involvement in the bargaining relationship often comes after a bargaining relationship has been strained. His introduction is of necessity rapid and superficial, not deep and thorough. Consequently he should attempt to follow proposals developed through bargaining by the parties and be cautious in imposing novel provisions which may prove to be less than fully workable in an agreement." This guideline is more difficult to respect here because the negotiating history for the 1978-79 salary items was somewhat truncated by the extended bargaining and strike regarding working conditions, pupil teacher ratios and sick leave gratuity in the 1977-78 agreement.

"Several principles should normally guide an arbitrator in an interest dispute. The first of these is that he should attempt to produce the agreement that the parties themselves would have produced through the ordinary course of negotiations as if it were unnecessary to resort to compulsory arbitration. Obviously there is a degree of artificiality to this. It is the very failure of the parties to come to a negotiated agreement that precipitated the need to arbitrate. Nevertheless, the arbitrator should attempt to place the parties in the position that they would have arrived at themselves assuming that a reasonable exchange of views and rational dialogue produced consensus."

"A second and related principle is this. In attempting to produce this agreement based on certain assumptions about the parties' negotiating conduct, the arbitrator must pay heed not only to what the parties say in an arbitration hearing and to their written briefs but also to what they said and what positions they took at various stages in the negotiations particularly those stages which seemed to be closest to settlement."

"A third principle is this. The arbitrator must have careful regard to relevant comparable circumstances. In looking for those comparable circumstances he must try to find those circumstances which duplicate as closely as possible the characteristics of the two parties and similar negotiating rationale and strengths. If the arbitrator's task is to determine what agreement the parties might have negotiated for themselves had they been able to bargain to an agreement, he should be particularly conscious of other relevant circumstances where those parties or substantially similar parties have done so."

In preparing this award, I have been guided by the three principles discussed above.

Kirkland Lake Secondary, 1978-79 - BURKETT - pp.1-2

The state of the relationship between the parties is reflected in the request by the teachers that they be presented with a completed collective agreement in order to avoid any misunderstanding and the submission that our award would best serve the parties if one side or the other could be seen as a winner. We have rejected the request of the teachers that they be presented with a completed collective agreement. We have drafted our award in the normal fashion in the expectation that the parties are sufficiently mature to prepare and execute a formal collective agreement in accord with terms of our award. Similarly, we have turned a deaf ear to the submission that, in effect, our award declare a winner between the parties. While the parties may have forced themselves into a win-lose position and made their negotiations more difficult in the process, this Board must weigh and decide the merits of their respective claims

having regard to a number of relevant factors. In so doing we have taken into account the competing, and sometimes coinciding, interests of teachers, taxpayers and students in the Kirkland Lake community and have come to a consensus as to the trade-offs and compromises between the two positions before us which are justified on the merits. It is our hope that this unanimous award will be seen by the parties as a fresh point of departure in their ongoing relationship and coupled with the agreed three year term will provide both the inclination and the time necessary to restore the relationship.

Metropolitan Toronto Secondary, 1975-76 - DUBIN - pp.2-4

On January 19, 1976, pursuant to the provisions of The Metropolitan Toronto Boards of Education and Teachers Disputes Act, 1976, (hereinafter referred to as Bill 1), I was appointed as the arbitrator to examine into and decide all matters in dispute between the parties and any other matters that appear to me to be necessary to be decided in order to make a decision. The Act also provides that my decision shall be for the period commencing on the 1st day of September, 1975, and expiring on a date not later than the 31st day of August, 1977.

On January 19, I met with counsel who advised me that the first day upon which they could reasonably be expected to commence the hearing would be on January 28. After discussion with counsel, I decided that the hearing of the arbitration would be conducted in public.

On January 23, pursuant to s.3(4) of Bill 1, the parties gave notice to me of the matters in dispute.

The hearing of the arbitration commenced on January 28, at which time both parties presented briefs and outlined the salient points contained within them. The reply briefs were filed with me on February 3. On February 5, the hearing was reconvened for the taking of further evidence, submissions and argument. Those hearings continued through February 6 and concluded in the late afternoon of February 7. I met in Executive Session with counsel and their expert witnesses on February 9, at which time some of the statistical information was further reviewed. On February 11, I received additional material. Since no issue was taken as to the accuracy of the statistical information provided by both parties, it was agreed that during the preparation of my award, I could informally request of either party further statistical information without the necessity of reconvening, or having such further statistical information exchanged.

Since the matters in dispute were so numerous and so complex, and the hearings extended over such a lengthy period of time, I concluded that I could not do justice to the matter within the one week left to me if I endeavoured to deliver my decision within the thirty days of my appointment. I, therefore, pursuant to s.4(2) of Bill 1 sought and obtained from the Educaiton Relations Commission an extension of time within which to report in writing my decision until March 5.

Kirkland Lake Secondary, 1975-76 - JOHNSTON - pp.3-5

This arbitration takes place under the general jurisdiction of Bill 100. The arbitrator derives his specific jurisdiction from Bill 2. The arbitrator was appointed by order-in-council dated March 17, 1976.

Bill 2 requires each of the parties to submit a statement of items that have been agreed upon and of items in dispute within seven days of the passage of Bill 2. Each of the parties submitted that statement to the arbitrator on March 23rd. A hearing took place in Kirkland Lake on March 26th during which time the parties submitted further evidence and argument in writing and orally. Subsequent to the hearing on March 31, 1976 each of the parties submitted and exchanged a written reply to the other's submission.

At the commencement of the hearing the parties agreed that the arbitrator was properly appointed and had complete jurisdiction to hear all matters in dispute.

1. The Adjournment Issue

On March 18, 1976 the Teachers requested an adjournment of the proposed hearing date of March 31st because the negotiating team had not received time off from teaching duties to prepare its arbitration brief. Given the importance of a prompt response to Bill 2, I viewed the prospect of an adjournment of the commencement of hearings with some concern. I sought evidence from the parties in this matter. From the evidence I concluded that in fact, as events transpired, the teachers concerned were off from teaching duties and in a position to prepare their submission. Accordingly, I denied the request for the adjournment and ruled that the hearings would commence as scheduled on March 26th. I made it clear in the ruling that if it were established during the course of the March 26th hearing that either party had not had reasonable opportunity to present its case fully then at the conclusion of that day's hearing I would consider a request for a further hearing at a subsequent date.

Again, at the outset of the March 26th hearing I made it clear that if either party required additional time to make its formal submission or to prepare a satisfactory reply I would be happy to entertain a request that subsequent hearings be arranged. No such request was forthcoming and the parties mutually agreed to the hearing schedule and time limit of five working days for written reply.

2. The Arbitration Arguments Document

The Teachers made formal objection to the filing and reading at the hearing of a document by the Board entitled "Arbitration Arguments of the Board" [exhibit 2(c)]. The Teachers contended that this document contravened the instructions of the arbitrator with respect to the appropriate evidence and arguments because the Board had not given it to the Teachers prior to the hearing for their consideration. My instructions to the parties were contained in a telegram dated March 24, 1976. Those instructions requested each party to present its "submission and rationale" at the hearing with respect to each item in dispute.

The Board had sent to the Teachers prior to the hearing a "Summary of Rationale" [exhibit 2(a)]. The contentious document, [exhibit 2(c)] was a detailed expansion by way of evidence and argument of that summary.

I conclude that exhibit 2(c) was not in contravention of my instructions. It was appropriate for either party to introduce for the first time at the hearing evidence and argument. The purpose of the reply portion at the formal hearing and the five day period following the hearing for written reply was to ensure that each party had the opportunity to consider the other party's evidence and argument and respond in appropriate fashion.

Windsor Secondary, 1975-76 - FERGUSON - pp.2-3

In accordance with the requirements of Bill 75, the parties have served notice on me of all matters which they have agreed upon for inclusion in the agreement which will run from January 1, 1976. They have also confirmed that the matters which now remain in dispute and which require adjudication are as follows:

(1) Cost of living allowance,
(2) Staffing, and
(3) Salaries.

All procedures prior to the hearings conducted by me were finalized expeditiously through co-operation from counsel, Mr. Leon Paronian and Mr. Leonard Kavanaugh. I conducted hearings in Windsor on June 7th, June 8th and June 17, 1976. At these hearings each of the parties submitted substantial briefs in support of their respective positions. The Federation called one witness, being Mr. Roy Battagello, a Principal at W. D. Lowe Secondary School. Each of the parties was given full opportunity to reply to the briefs submitted by the other party, and to summarize their respective positions after the extensive briefs and exhibits had been filed, exchanged and read.

Prior to the commencement of the hearings I received written representations from the Windsor Association of Rate payers. These representations were supplied to Counsel and the authorized representatives of the Association who attended the hearing were given an opportunity to place before me any submissions in support of their brief.

Niagara South Secondary, 1976-77 - KENNEDY - p.1

This Board of Arbitration is constituted pursuant to the provisions of The School Boards and Teachers Collective Negotiations Act, 1975, to settle the matters in dispute between the Niagara South Board of Education and the Branch Affiliates of Secondary School Teachers employed by that Board with respect to the Collective Agreement to be in force between the parties for the period September 1st, 1976 to August 31st, 1977. The parties have complied with the requirements of that Act in filing with the Arbitration Board

particulars as to the articles which have been agreed upon between the parties and setting out the respective positions of the parties on the articles which continue to be in dispute. It was agreed that all submissions to this Arbitration Board would be made in writing, and that a Hearing would not be required. Briefs and replies have been received from each of the parties and this decision is based upon the materials so submitted.

Peel Secondary, 1976-77 - BECK - pp.2-3

At the commencement of the mediation-arbitration proceedings the parties and myself as mediator-arbitrator signed a letter of understanding with respect to procedures to be followed. This agreement was signed on May 10th, 1977. Pursuant to it, mediation commenced on Tuesday, May 10th and proceeded through Thursday, May 12th. Early in the evening of May 12th, it became evident to me that no agreement was possible and I informed the parties that the mediation process had ended and that I would now act as an arbitrator. With respect to the procedures agreed to, the following paragraphs are relevant to the arbitration proceedings.

1. The parties agree to be bound by the results of the mediation-arbitration as if the outstanding issues had been submitted to arbitration under s.29(1) and subject to binding force and good faith compliance under s.36 (2) of The School Boards and Teachers Collective Negotiations Act, S.O. 1975 ("the Act").

2. The mediator-arbitrator agrees to comply with the time limit for decision under s.36(1) of the Act except that "60 days" shall be taken as if it read "30 days".

3. If any of the outstanding matters are not resolved through mediation, the parties agree to waive a hearing before the arbitrator and the mediation process shall be taken to be the fact finding process for the matters to be decided by arbitration. Each of the parties shall have the right to submit a short written submission (five pages) on each matter to be decided by arbitration within 48 hours of arbitration being announced.

4. The arbitrator reserves the right to require written submissions on any of the matters to be decided by arbitration.

5. The mediator-arbitrator reserves the right to use material or information gathered from the Education Relations Commission or any other source which he in his sole discretion deems relevant at any time during the mediation-arbitration process.

Sault Ste. Marie Secondary, 1978-79 - DOWNIE - pp.1-3

The parties agreed in writing on June 26, 1978 to refer the items that remained unresolved in their negotiations to voluntary binding arbitration. A letter dated July 21, 1978 giving notice to the Education Relations Commission to this effect was signed by both parties. The letter also listed the items remaining in dispute to be decided by the arbitrator. On August 8, 1978 the undersigned was appointed by the Education Relations Commission pursuant to Part IV of The School Boards and Teachers Collective Negotiations Act, 1975 (hereinafter referred to as "Bill 100" or "The Act") to hear and determine the matters in dispute between the parties.

A hearing was held in Sault Ste. Marie commencing on the morning of September 15, 1978. The meeting lasted all day and a further meeting was held on September 16, 1978. Both sides were given full opportunity to make written and oral submissions and to present evidence supporting their case. There was considerable oral presentation and both parties filed large written briefs. It is impossible, and not desirable, for me to comment on all of the evidence presented although I comment on some of it extensively throughout the award. I should point out, nevertheless, that this award is based on all of the evidence submitted.

Several matters should be noted before turning to the issues in dispute. First, both parties agreed that the collective agreement should run for two years. This award, therefore, shall be effective from September 1, 1978 to August 31, 1980. The terms of the award shall apply on a retroactive basis back to September 1, 1978.

Secondly, the Teachers, at the beginning of the hearing, commented on the time constraint placed upon them with respect to the arbitration. I believe it is sufficient to point out that the parties mutually agreed to binding arbitration more than two months before the hearing was held in Sault Ste. Marie and the arbitrator was appointed more than a month before the hearing. Unfortunately, the entire negotiating team for the Teachers was out of town until the end of August. At no time did the Teachers indicate that they could not be prepared for the hearing. Indeed, in early September an accommodation was apparently worked out between the parties which allowed members of the Teachers' negotiating team to take time off from their teaching duties to complete their brief. The very comprehensive and detailed brief submitted by them is evidence that they were prepared. Moreover, this became a non-issue. At the end of the arbitration the Teachers commented most favourably on the hearings; that both sides had been afforded a full opportunity to present their case and that there had been a full and thorough examination of the issues. Nonetheless, the problem is indicative of the types of issues that arise in Teacher/Board disputes in this province once the academic year is over and the parties go on vacation.

A third matter must also be discussed. The parties, when applying for arbitration, filed with the Education Relations Commission a joint statement setting forth the items in dispute. This was also filed with the arbitrator. Article 7.00 which deals with fringe benefits had been placed on the list of items in dispute, but had been scratched off and this change was initiated by both parties. A disagreement apparently then arose over the status of article 7.00. At the hearing, the Board claimed article 7.00 had been settled, the Teachers that, due to a misunderstanding, it was still in dispute. The arbitrator indicated to the parties that the matter would be set aside until the end of the hearing. The parties, during the hearing, reached an accommodation on article 7.00, signed off the item and agreed it was no longer in dispute. I, therefore, do not deal with it. Similarly, the parties had originally listed 8.03 (b) and 16.01 as in dispute. During the hearing both sides agreed these items were no longer in dispute. They agreed that articles 8.03 and 16.01 would remain unchanged in 1978-79 and 1979-80.

Lambton Elementary, 1977-78 - KENNEDY - pp. 5-6

One of the Teacher requests is that we direct the Board of Education that in filing its reports to the Anti-Inflation Board, the costing of increment be excluded from the increase in compensation for A.I.B. purposes. Some argument was directed to us as to whether or not such a ruling is, in fact, within the jurisdiction of a board of arbitration and, in our view, we are obliged to recognize the existing judicial directives on the point and therefore have no jurisdiction to make the ruling requested by the Teachers. The Memorandum referring this matter to us for arbitration makes it very clear that the Board has not consented that the question of inclusion of increment be a matter to be settled by arbitration. Accordingly, we have no foundation upon the basis of consensual jurisdiction to make any directive. The Board has consistently, in its A.I.B. reporting, included increment as an increase in compensation and the Board further stated categorically on the hearing that it proposed to continue that practice. The situation that is before us is, in our view, clearly within the fact situation considered by the Divisional Court in its Judgment released July 17th, 1978 relating to an arbitration between the Board of Trustees of the Frontenac, Lennox and Addington Roman Catholic Separate School Board and the Ontario English Catholic Teachers' Association, and we are therefore satisfied that we cannot make any direction to the Board as to how it is to file the forms required of it under the provisions of the Anti-Inflation legislation. It is common ground between the parties that the guideline for the elementary teachers for the first contract year under review is 6%,and the Board proposal for that year including increment would result in a total increase compensation slightly above that guideline figure. According to the Teachers, with increment excluded, the Board proposal is an increase of about 3.8%. We recognize that with respect to the inclusion or exclusion of increment for A.I.B. purposes, the Anti-Inflation Board has, in a sense, abrogated its responsibility by, in general, leaving it up to the parties whether or not compensation increases are to be reported including or excluding increment. Where the Boards report excluding increment, that is generally the end of the matter and we further recognize that exclusion is the practice by a predominant number of Boards in Ontario. However, the Board has made it clear, and indeed has been consistent throughout its reporting, that increment is to be included and this is a factor which, as a board of arbitration, we simply must accept. If we were to award more than the Board proposal for the first contract year, the matter will have to go the A.I.B. and a roll-back would appear to be inevitable. The effect of this will simply be to extend the period of time wherein the parties must operate in an atmosphere of uncertainty and without a final contract determination, and we do not consider that that would be in the interests of either the parties or of the educational system in Lambton County.

Award Addendum

The Award of the Board of Arbitration in this matter was released to the parties September 26th, 1978. We were

subsequently advised by counsel for the Teachers that a problem had arisen between the parties in completing the Collective Agreement to be entered into pursuant to our Award. The parties disagreed as to what Ontario Dental Association Fee Schedule would be implemented, it being the position of the Teachers that the 1977 Schedule was required pursuant to the Award. Written submissions on the point were received from counsel for the Teachers on December 27th, 1978, and the written submission of counsel for the Board was received February 21st, 1979. Mr. Markle's reply was received March 28th, 1979, and by this letter I propose to deal with the issue which has arisen

It is my view that the argument submitted by Counsel for the Board correctly sets out the outstanding issue and the proper approach to that issue to be taken by this Board of Arbitration. We do not consider it appropriate to review negotiation history to determine what issues may or may not at one time have existed between the parties and we consider that it is appropriate to resolve only issues that were referred to us in the arbitration documentation and which were dealt with by the parties on the Hearing. In relation to the Dental Plan the only aspect of that Plan that was dealt with before us related to the appropriate percentage of contribution on the part of the Board and did not relate to the substantive details of the Plan itself. We have made our ruling with respect to the appropriate percentage payment and we did not award any change in the substantive provisions of the Plans themselves. In reading Mr. Teplitsky's Award with respect to the secondary contract, it again deals only with the appropriate percentage of contribution on the part of the Board and not with the substance of the Plan provisions.

It would, therefore, be my conclusion that we have awarded no change in the substantive provisions of any of the Plans which were previously in force between the parties.

Lambton Secondary, 1977-78 - TEPLITSKY - pp. 2-3

Notwithstanding the above-mentioned items in dispute, the Board contends that the matter of inclusion or exclusion of increment on the AIB 2 report is not an item in dispute and furthermore, is not a fit matter for negotiation or arbitration between the parties.

The Branch Affiliate contends that the matter of inclusion or exclusion of increment on the AIB 2 report is an item in dispute and is a fit matter for negotiation and arbitration between the parties.

I propose to consider the issue of increment first. This issue, as is apparent from the aforesaid list, is raised in a very unusual way, the Board on the one hand maintaining that it is neither an item in dispute nor arbitrable, and the Teachers on the other hand maintaining that it is both an item in dispute and arbitrable. Raised as a threshold question,

is whether a valid submission to arbitration under The School Board and Teachers Negotiations Act, 1975 (hereinafter called Bill 100) requires that there be agreement on the items in dispute. Mrs. Sigurdson submitted that in reaching my decision, I should consider Sections 29 to 32 inclusive and Section 35 of Bill 100 and that Section 32 contemplates that both parties will submit lists of items in dispute but does not require that the lists be the same. I accept this submission. On the other hand, there would be few submissions to arbitration if either party could raise matters for the first time in its list, or re-introduce matters previously withdrawn in the bargaining or matters "traded off". Thus, in situations where the parties have not both agreed on the contents of the items in dispute, I have concluded that the conditions for a valid submission to arbitration are met, if the issue is one which (a) may be provided for in an agreement, (b) has been raised by a party as an item in dispute prior to the agreement to submit to arbitration, and (c) has not been withdrawn or otherwise disposed of. In this situation,the Board at all times knew that the Teachers considered the exclusion of increment as an item in dispute.

Whether the exclusion of increment is a matter that may be provided for in an agreement turns on Section 9 of Bill 100 which provides that "negotiations shall be carried out in respect of any term or condition of employment put forward by either party". Thus the issue reduces itself to the answer to the query: "Is the exclusion of increment a term or condition of emplyment?"

In my opinion the question of exclusion or inclusion of increment is a negotiable item which may be provided for in an agreement and is, therefore, arbitrable.

Muskoka Secondary, 1978-79 - KENNEDY - pp.4-5

As a preliminary matter, we would also note that there was some discussion on the hearing as to whether, in fact, the issue of a PTR clause was a proper subject matter for negotiation, or whether it was, in essence, a prerogative of the Board and the electorate to which it was responsible. We are satisfied that a provision with respect to PTR is a term or condition of employment in the sense of both work load and security, and that by virtue of Section 3 of The School Boards and Teachers Collective Negotiations Act, 1975, the inclusion or exclusion of such a provision put forward by either party is a proper matter for negotiations under the Act and for determining by arbitration as provided in the Act. The established practice wherein such provisions appear in approximately one-half of the secondary school contracts in Ontario would lend further support to that view.

The rationale put forward by the Teachers for the inclusion of the clause relies substantially on an examination of trends in Muskoka over the past few years. During that period, the Board has maintained policies with respect to PTR and class-size; and it would appear, on the materials presented on the hearing, that in the period 1969 to date, the PTR in the system has gone from 15.92 to 17.86, and that during that time,

the increase has been steady and consistent. On class size, the Board policy stated that the Board would continue to work towards class sizes of specified levels. It was again established on the materials filed that a significant proportion of the existing classes were, in fact, in excess of the levels provided for in the policy. With respect to the overall provincial picture, the Teachers pointed out that the average provincial PTR for the 1978-79 school year was 16.9, and the trend therein over the last five years was a declining one. The desirability of a lowered PTR was supported as desirable in the interests of greater educational and instructional quality, limitation on work load, and as a job security provision in face of an anticipated 26% decline in student enrolment over the next five years. On the aspects of work load and job security, there is no question that a PTR is a relevant consideration to both those aspects and does constitute a legitimate Teacher concern in the context of collective bargaining.

Northumberland and Newcastle Secondary, 1978-79 - KENNEDY - pp.4-5

As a preliminary matter, counsel for the Board suggested that the question of responsibility, degree and experience allowance had not in fact been referred to arbitration based on the language of the document signed by the parties March 30th, 1979. That document makes specific reference to split grid and to the Teachers' proposals with respect to S.T.S. which were presented to this Board of Arbitration. It also makes specific reference to principals and vice-principals and if they will be determined on the basis of the S.T.S. The Board therefore argued that because there was no specific reference to the other allowances, they were not included in the submission to arbitration. We do not consider that objection to be well-founded. Firstly, the memorandum itself is anything but a precise document. It does, however, make specific reference to the letters S.T.S., which of themselves are meaningless without a knowledge of the entire background of negotiations between the parties. We think it is implicit that by including the S.T.S. number in the memorandum, the parties clearly intended that the entire S.T.S. structure be the subject matter of arbitration as the change proposed by the Board does in fact constitute a substantive change in that entire structure. It is also clear that the Board had no basis whatsoever for assuming that the Teachers were abandoning a portion of the S.T.S. structure, and we are satisfied that that aspect of the Agreement, in its entirety, including the necessary effect on experience, degree and responsibility allowance have been referred to us for decision.

NOUVELLES POSITIONS DANS L'ARBITRAGE

Windsor Secondary, 1975-76 - FERGUSON - p.9

At the arbitration hearing the Board proposed for the very fist time a completely new position of "package" on the cost of living allowance. This proposition which could be appropriately described as a "surprise package", had not been previously submitted. I find it difficult to understand why such a tactic was adopted by the Board when considering all that had transpired up to the time of my appointment as Arbitrator. This type of tactic can only be described by me as "Bush-League" collective bargaining, and in my opinion it serves as no credit to the Board in attempting to create an improved relationship with its teachers.

Frontenac, Lennox and Addington R. C. S. S., 1977-78 - BECK - p.16

The one issue remaining is whether increment ought to be included in the Board's reporting to the Anti-Inflation Board. Neither the Teacher's nor the Board's original briefs addressed the question of inclusion or exclusion of increment. The matter was first raised in oral argument by the Board and, after an adjournment was granted to allow the filing of further written material, was dealt with in both the Teacher's reply and the Board's rebuttal. The Board takes the position that the only issue submitted to arbitration was "the salary grid for the academic year 1977-78." The Teachers take the position that "the issue of salary submitted to arbitration raises the question of the inclusion or exclusion of increment in reporting to the Anti-Inflation Board." In my view, the item has in effect been submitted to the Arbitration panel for its decision. The parties were clearly of the opinion that in submitting the issue of increase in salary scale to arbitration, that they had settled all other matters. It could not have escaped their attention that the contentious issue of inclusion or exclusion of increment had not been settled if in fact it had been settled. The reason that inclusion or exclusion of increment is contentious is obviously that if it is included in reporting the settlement, then the settlement appears to be X + Y rather than just X. And, of course, the Y element may cause the AIB to order a roll-back. What I am saying, in effect, is that whether or not increment is looked upon as a part of the increase in salary for the purposes of determining what an increase in the grid ought to be, it is surely looked upon by the Teachers, and the Board, as an increase on the one hand, and a real cost on the other, and to be deprived of it is to be deprived of a part of the increase.

Lambton Elementary, 1977-78 - KENNEDY - p.14

The situation with respect to the payment of principals within the Lambton elementary system has been accurately described as a "mish mash". It is extensively reviewed in the

Teachers' brief, and a compelling argument was made for some sort of award which would bring a realistic order to the system. In the course of the hearing, however, the Board produced, for the first time, a very comprehensive and specific proposal for a re-structuring of the principals' salary schedule which, in our view, meets the legitimate needs of the parties in this area. We feel constrained to point out that this is a most unusual time for a new position to be brought forward, and we regret very much that the Teachers had not had a prior opportunity to comment upon and consider the proposal itself. We have spent considerable time discussing this among ourselves, and we are firmly of the view that the Board proposal is a very well-thought out and comprehensive position, and we adopt it totally as our Award in this area for each of the two contracts.

Kent Secondary, 1978-79 - KENNEDY - pp.4-5

As a preliminary matter at the hearing Counsel for the Board objected to the change in Teacher position on the ground that failure to disclose it to the Board at an earlier stage constituted bargaining in bad faith. It was further suggested by the Board that it was improper for the Teachers to increase the extent of demands over and above what they were on the date the parties agreed to go to arbitration and that for the purposes of this arbitration, the Teachers should be bound by the maximums of their positions as at March 14th, but where any of the demands were, in fact, reduced by the changed position, then those reductions should be accepted as the only modifications to be considered by the Board of Arbitration. It was our view, as expressed to the parties on the Hearing, that the arbitration process was not the appropriate venue to deal with allegations of bad faith negotiation and that in any event, the long-term interests of the parties would not be advanced by the consideration of matters of that nature. It was our view that the issue referred to us for arbitration related to the determination of an appropriate teaching grid and that the nature of the changes in position from March 14th to the arbitration brief did not deprive us of jurisdiction to consider the merits of the positions as presented on the Hearing.

ROLE DES NEGOCIATIONS PRECEDENTES

Huron Secondary, 1977-78 - JOHNSTON - p.4

"A second and related principle is this. In attempting to produce this agreement based on certain assumptions about the parties' negotiating conduct, the arbitrator must pay heed not only to what the parties say in an arbitration hearing and to their written briefs but also to what they said and what positions they took at various stages in the negotiations particularly those stages which seemed to be closest to settlement."

Stormont, Dundas and Glengarry Secondary, 1975-76 - KRUGER - pp.2-3

The Board has considered the positions of the parties. We find that the Federation entered into an agreement with the Board of Education which terminated December 31, 1975. We have been asked to make an award for the period January 1, 1976 through August 31, 1976. It is not the practice of Boards of Arbitration to give significant weight to alleged salary inequities prior to the period for which an award is issued. This is particularly the case where the salaries in the earlier period were determined by voluntary bargaining.

Renfrew Secondary, 1977-78 - SWAN - p.2

This parade of events involved a large number of neutral intervenors, including some of the most eminent and experienced scholars and practitioners of public sector labour relations in this province and this country. Nevertheless, by agreement between the parties, the written reports of every one of these intervenors have been excluded from our consideration, and we therefore approach the present arbitration completely innocent of all of the previous attempts to settle this dispute. This approach is entirely proper and generally in accordance with the usual jurisprudence in interest arbitration....

CONVENTION PROVISOIRE (NON RATIFIEE)

Leeds and Grenville Secondary, 1975-76 - ELLIS - pp.12-19

EVIDENCE CONCERNING THE COURSE OF NEGOTIATIONS TO DATE

Once it is recognized that the arbitration board is to consider the questions before it from the perspective of a negotiator, it then becomes clear that another general category of relevant evidence for it to consider is evidence as to the history of the bargaining relationship between the parties and as to the course of the current negotiations to date. It may be noted that evidence of this nature has inevitably been considered to some extent or other by the arbitrators appointed under the Negotiations Act whose awards have been published to date (see, for example, Dean Johnston's Kirkland Lake award at page 21).

Detailed evidence of the bargaining history and of the course of negotiations to date was requested by this Board and was provided by both parties. Part of the evidence offered in this respect related to a proposal that evolved during negotiations on March 3, 1976, which the Teachers referred to in their written submission as a "tentative agreement".

The admissability of evidence concerning this March 3 proposal became a very contentious issue during the course of these hearings and it is important that this award should record the nature of that issue and how it was resolved.

The so-called tentative agreement of March 3 emerged from what the Teachers themselves referred to in their written brief as an "off the record" meeting (see Teachers' Submissions, page 23). In its written submission the School Board had not referred at all to this meeting or the proposal that it developed, and in its written Reply to the Teachers' submission it emphasized the "off the record" nature of the meeting and took strong exception to the description of this proposal as a "tentative agreement" (see page 8 of the School Board's Reply).

At the hearing, this Board was concerned to determine whether in view of the admitted "off the record" nature of the meeting which produced the March 3rd proposal it was appropriate for it to receive any evidence concerning that proposal. The School Board was apparently content to have the board consider the proposal but only on the clear understanding that it was not to be characterized as a "tentative agreement" and, in effect, not to be used to the prejudice of the School Board.

For the purpose of considering this question the arbitration board solicited from the parties' spokesmen detailed information as to how this off-the-record meeting came to take place, the nature of the meeting, what the meeting achieved and how the proposal that emerged from the meeting was dealt with by the parties.

The School Board was not content to have the board reserve its decision on this question and, accordingly, the board took time to consider and the chairman delivered the following decision.

"INTERIM DECISION BY THE BOARD OF ARBITRATION - JULY 15,1976

1. The issue we have been asked by the Board of Education to decide, as we understand it, is whether the two category schedules which were tabled on March 3, 1976, presented to the Board of Education by Mr. Vander Schaaf on March 8 and rejected, and which appear on Page 23 and 24 of the teachers' submission, and the facts pertaining to their development and disposal are proper matters for consideration by this board for any prupose. The School Board's counsel, Mr. Bowman, is strongly opposed to any consideration of any kind being given. (The board was subsequently corrected by Mr. Bowman in that regard. See the Board's actual position stated above). He has indicated that a decision to give this material consideration would lead him to contemplate challenging the Board's decision in court. We have, therefore, given the question full and careful thought.

2. This arbitration board is unanimous in its view that "private" discussions between negotiators in the course of normal negotiations are a common occurence and an essential feature of effective negotiations and that arbitration boards of this nature should, as a matter of policy, be prepared to hear such evidence only in most unusual circumstances. The board members have difficulty in envisaging such circumstances and indeed Mr. Farrar is not prepared to consider that there would ever be an occasion to hear such evidence.

3. On the other hand, a majority of the board is satisfied that it is encumbent on it to hear evidence on the course of negotiations generally since it seems obvious that on the issue of what settlement the board should impose on the parties, the evidence as to what the negotiators themselves thought about the various issues as indicated by positions taken, moves made etc., during the course of negotiations is clearly relevant. Views will vary as to the weight to be given to any particular evidence of that nature but its relevancy in the majorities' view can hardly be questioned. Mr. Farrar dissents in this, in that he is of the view that consideration of matters of this kind should be confined to matters "on the record" in the sense of written offers formally exchanged.

4. The difficulty in the present case for the majority is to know whether the proposal in question should be considered the subject of private conversations and thus precluded from the board's consideration. Mr. Farrar on the other hand is quite clear that this is not information that is on the record in the sense noted above and for that reason would not consider it.

5. The facts on which the majority of the board relies in consideration of this question are set out below. Given the informal nature of the process by which the board has been apprised of the facts in this hearing and in view of the contentious nature of this issue, I pause here to invite objections to any of the facts listed. If there are objections which cannot be resolved and which the parties are not prepared to waive, then before rendering its decision on this issue the board will take sworn evidence in respect of fact issues which are the subject of those objections."

There followed a list of facts which the board had developed as a result of the information provided by counsel. The meeting in question had taken place between the chairman of the School Board's negotiating committee and its negotiator, Mr. Bowman, and the Chairman of the Teachers' negotiating committee, Mr. MacLennan. It had produced a proposal on the salary schedules which was accepted by the Teachers' negotiating committee but not by the School Board's negotiating committee and subsequently presented to the School Board itself by the Chairman of the Board's negotiating committee as "a position that could possibly lead to settlement'. The School Board rejected the proposal. The arbitration board's tentative list of facts contained some allusions to the role of the respective negotiating committees in the development of this proposal and to their respective attitudes towards the proposal, and these allusions proved to be contentious. The Teachers were particularly concerned to establish that while the School Board's negotiating committee had rejected the proposal, there had been significant support on the Committee for the proposal. The School Board's spokesman, Mr. Bowman, asserted flatly that there had been no support on the Committee for the proposal - a position somewhat at odds with the statement in the School Board's written reply (at page 8) that the proposal was rejected "by certain members of the bargaining committee for the Board" and one which the Teachers' counsel indicated was diametrically opposed to the impression the Teachers had received on the evening in question.

The arbitration board took time to consider whether it was appropriate for it to enquire into the issue as to how the proposal had been received by either of the negotiating committees and concluded that an arbitration board's legitimate interest in hearing evidence as to the course of negotiations stops short of direct evidence as to the motives of the negotiators for any step that is taken and must not be pursued beyond the door of the Committee Room. Mr. Farrar did not disagree with this but, as indicated above, he would have imposed even narrower restrictions on the board's enquiry.

The arbitration board, accordingly, revised its proposed statement of facts pertaining to the development of the "so-called" tentative agreement to exclude any allusions to the motives of the participants or the role or attitudes of the committees. This revised statement was agreed to by the parties and is as follows:

"(a) At the negotiating session on March 3, 1976 the teachers were advised that the Board negotiating committee had no authority to make any concession on monetary items beyond what it had offered on February 11 (as set out on page 18 of the Teachers' Submission).

(b) The teachers pressed and the parties agreed to continue negotiations until such time as the two week period, which they understood remained before a decision had to be made as to whether or not to seek arbitration, had expired.

(c) On the evening of March 3, 1976 Mr. Bowman, the Board's negotiator and Mr. Vander Schaaf, the chairman of the Board's negotiating committee agreed to meet with the teachers' chairman, Mr. MacLennan, to explore possibilities.

(d) It was clearly understood by all concerned that Mr. Bowman and Mr. Vander Schaaf were exploring possibilities of settlement of the category salary schedules on their own initiative and beyond the authority given to them by the School Board. There is, it may be noted in passing, no suggestion from any quarter that this was in any sense improper conduct by any of the parties. Indeed, it was a responsible effort by all to exhaust the possibilities of settlement in what had become an impasse.

(e) There was no express discussion of the "private or 'without prejudice' nature of the meeting beyond the fact that it was understood that it was an exploratory meeting and that the School Board would not be bound by what transpired because both Mr. Bowman and Mr. Vander Schaaf were acting beyond their instructions.

(f) Both negotiating committees remained in the building while the meeting between the three individuals mentioned proceeded in a separate office, and were consulted from time to time. The meeting continued for about 2-1/2 hours.

(g) The meeting produced the category salary schedules for January 1, 1976 and September 1, 1976, set out on page 23 and 24 of the Teachers' written submission. It is to be noted that it did not purport to deal with the other outstanding issues.

(h) The Teachers' negotiating committee approved the two schedules. They were not, however, approved by the Board's Committee and this fact was communicated to the teachers before the negotiating session on March 3rd broke up.

(i) Mr. Vander Schaaf, however, undertook to the teachers that he would present the two schedules to the Board of Education as representing a position that 'could possibly lead to settlement'. This was done at a meeting of the School Board on March 8 and the Board rejected them."

On the basis of these agreed facts, the board held (Mr. Farrar dissenting) that it was satisfied that the two salary schedules in question were not the subject of the kind of "private" discussions which considerations of policy should render sacrosanct. The board concluded, therefore, that the two schedules and the facts related to the manner of their development and disposal set out above are facts to which this board may and should have reference. The board was of the further view that nothing was served in attempting to label the occurence and indicated that it attached no significance to the description of the two schedules in the Teachers' written submission as a "tentative agreement".

Finally, the Board indicated that the question of the weight to be given to the above-mentioned facts was entirely another issue which the parties were invited to address in their closing arguments.

Ottawa Secondary, 1976-77 - TEPLITSKY - pp. 2-3

There is, however, one matter that arose in the briefs which requires comment. The briefs disclosed that a tentative agreement had been reached between the negotiating committees for the teachers and the Board, the terms of this tentative agreement and the fact that one party failed to ratify. It was then urged in a critical vein that a party was "negotiating down" when it failed to agree to a position previously offered but not accepted at first. It must always be remembered that offers of settlement are "without prejudice" until actual agreement is reached. An arbitrator has no interest in such offers. They should not be disclosed to him and any attempt to prejudice a party by referring to such an offer of settlement is improper. Until the parties ratify the tentative agreement, there is no agreement. If ratification does not occur then the parties are free to adopt any negotiating posture they choose. It is, of course, very unfortunate when tentative agreements are not ratified but the failure to ratify when the negotiating committee has in good faith recommended the settlement, is not bargaining in bad faith nor should it be cause for exacerbating tensions between the parties. It must be understood that there is always a chance that ratification may not take place. Parties who have offered to settle are protected by law in the event ratification does not occur because the offer they have made may not subsequently be used against them. They are neither legally nor morally bound to renew the offer. The party who declines to ratify must not and cannot expect that the offer once refused remains open as a minimum base from which he may negotiate upwards. We are satisfied that the disclosure was made inadvertently and without appreciation of the protection the law affords "offers of settlement" which protection is necessary to promote free exchange of settlement discussions.

Peel Elementary, 1980-81 - TEPLITSKY - pp. 2-6

Whether a non-ratified agreement is admissible in evidence and/or whether it has any probative value are issues on which arbitrators differ. The vast majority of arbitrators admit these non-ratified agreements into evidence and give them some weight. Dean Johnson, in an award dated July 19, 1978, goes even further:

> "A second and related principle is this. In attempting to produce this agreement based on certain assumptions about the parties' negotiating conduct, the arbitrator must pay heed not only to what the parties say in an arbitration hearing and to their written briefs but also to what they said and what positions they took at various stages in the negotiations particularly those stages which seemed to be closest to settlement."

More directly on point are Mr. Burkett's observations in an award between C.U.P.E. and 57 participating hospitals dated December 22, 1978:

> "The collective decision of the union membership to reject the memorandum does not cause the Board to disregard it. Notwithstanding the right of the trade union membership to reject the settlement recommended by its bargaining committee, the terms of the memorandum stand as evidence of a package which was seen by the negotiating committees representing both parties as a realistic basis of settlement in the circumstances of this case. Just as a union membership which rejects the recommendation of its negotiating committee in the private sector does so in the knowledge that it may be required to engage in an economic confrontation, which may or may not result in an improved package, so also a membership which rejects the recommendation of its negotiating committee where compulsory arbitration is the final dispute settlement mechanism does so in the knowledge that an arbitration Board will consider the memorandum as evidence of that which was seen by the negotiating committees as a realistic basis of settlement and may find that the signed memorandum constitutes an equitable basis upon which to make an award."

The principle has also been adopted in the following cases:

York County Board of Education, Report of Fact Finder David C. Moore, December 10, 1979

Belleville General Hospital, March 17, 1975, Chairman H. D. Brown

Salvation Army Hospital and St. Joseph's Hospital, April 30, 1974, Chairman George Ferguson

Wellesley Hospital and New Mount Sinai Hospital, June 27, 1973, Chairman H. D. Brown

Peel Memorial Hospital, March 1969, Chairman Paul Weiler

It is with some diffidence that I register my dissent from these views. Although I agree with Dean Johnson that the ideal result of arbitration would be a settlement identical to the one the parties themselves would have made, Dean Johnson's concerns about positions taken when settlement seemed to be closest leads to several unsatisfactory consequences. First, a Board of Arbitration would find it extremely difficult and time consuming to determine this collateral fact. Further, a Board of Arbitration must consider the facts as they appear at the time of the hearing, not at the time of negotiations. In this case, for example, the parties tentatively settled at the beginning of June, 1980 but this Board's deliberations are occurring almost 11 months later. What may

have appeared reasonable almost a year ago may seem quite unreasonable today. We are experiencing very volatile economic times. The rate of inflation has accelerated since June, 1980 and the settlements in the educational sector, generally speaking have been increasing. Further, subsequent to June, 1980, a significant settlement between the Secondary Teachers and certain of the school boards within Metropolitan Toronto was achieved through voluntary negotiations. This settlement is entitled to great weight.

Turning to Mr. Burkett's analysis, in my opinion, a tentative agreement is no more than the opinion of the negotiating teams as to what is reasonable. I do not think that any arbitrator would permit such evidence of the opinion of members of the negotiating team to be given orally. That the opinion is a mutual one and reduced to writing does not add to its probative value. In disputes which are tried in our courts, tentative agreements between counsel which are not accepted by their principals (when it is known that counsel has no authority to bind his client) are inadmissible. These are part of the negotiating process and are protected by the "without prejudice" privilege. This privilege is designed to encourage parties to settle. I am not aware of, nor has any reason been suggested to me, of any special circumstance peculiar to the Labour Relations context which justifies a departure from the usual rule. It is a serious infringement on the right of a principal to reject his agent's advice if that agent's advice is admitted in evidence and given weight.

Parties who reject tentative agreements and proceed to arbitration should not, as Mr. Burkett suggests, fear the adoption of the settlement by the Board of Arbitration. Rather, they should fear a different result, one which may be worse than the settlement they have rejected. As the matter now stands if the employees reject the settlement, they may get more at arbitration but they will not get less. As far as I am concerned this is an unsatisfactory dynamic and obviously one which encourages rejection. On the other hand, if the negotiating team were to advise the membership that rejection may be followed by an adverse result at arbitration, the situation could well be different. Similarly, as matters now stand, an employer, particularly in the public sector, can reject a settlement, proceed to arbitration and be assured that the result will not be worse than the tentative settlement. This facilitates their avoiding taking responsibility for decision making. In my opinion, the very evil which the present rule of admitting tentative, non-ratifying agreements into evidence is designed to avoid, namely, rejection of the settlements by the principals, is, in fact, exacerbated by the rule. Accordingly, as a matter of policy, it would be preferable not to admit these matters into evidence, quite apart from the fact that as a matter of law I think they are not admissible. In any event, in this particular case, the long delay between the making of the settlement and the time of the arbitration renders the settlement unhelpful because the circumstances have changed so much.

SOURCES DES DONNEES

Metropolitan Toronto Secondary, 1975-76 - DUBIN - p.1

It is to be observed that the function which I have been directed to perform is that of an arbitrator. Although an arbitrator need not be a judge, an arbitrator must act judicially, and it is his duty to come to a decision based upon the merits of the case as submitted. An arbitrator is not free to act independently of the positions and submissions of the parties. His role is quite different from that of a Royal Commissioner, or of a person who has been given a mandate to arrive at any result that he thinks appropriate as a result of his own independent investigation. In the context of the matters before me, the parties have narrowed the issue with respect to each matter in dispute and have withdrawn from my consideration a determination of the issues in a manner which would fall below or above what has been submitted, nor can I interfere with matters which the parties had expressly agreed upon.

Leeds and Grenville Secondary, 1975-76 - ELLIS - pp.3-6

As to the material for which the arbitration board might properly have regard in reaching its decision, it was generally accepted that the board must confine itself insofar as data and specific information was concerned to what was presented to it by the parties. The Teachers, however, would have limited the board also to the arguments made to it by the parties and prevented it as well from considering extraneous legal considerations. The School Board argued that the arbitration board must be entitled to have regard to any knowledge that any of the arbitration board members possessed on the issues it faces.

On the question of what arguments it can consider, this board is satisfied that it cannot be confined in its analysis of the issues to such arguments as may have been made before it. Hopefully, all viable arguments will be canvassed during hearings of this nature but the board must be free to make its own analysis ultimately and cannot be prevented from considering a relevant argument merely because it happened not to be raised during the hearings.

This board is also satisfied that it must be taken to know the law as it may apply to any of the issues and be governed by that law, whether or not the parties may have specifically brought any such law to the board's attention. The Teachers' concern in respect of this latter point was focussed on the extent, if any, to which this board should consider its award to be governed by the Anti-Inflation legislation. That question will be dealt with in due course below, but there can be no doubt that this board is not free to ignore the existence of that legislation and must consider its implications.

This board is also satisfied that it can properly have resort, in considering the issues before it, to the special experience and background of its members. Arbitration board members have been selected in large measure because of that very experience and background. The example cited by the School Board of the necessity of the arbitration board relying

on the general collective bargaining experience of its members in assessing the weight to be given to what the Teachers have referred to as the "tentative agreement" of March 3rd (see the more detailed discussion below) illustrates the way in which this experience and background can and must be applied. It goes without saying, however, that the arbitration board could not properly have regard to specific information or data, such as comparative salary or benefit data or property tax information, that was not presented to it at the hearings and which the parties had no opportunity to review, merely because such information happened to be in the possession of one of its members.

A related question as to the extent to which the arbitration board ought to take initiatives during the hearings in soliciting data from the parties which the parties had not offered, was raised by the Teachers during the hearings. The issue came up for decision in connection with the chairman's question as to whether or not comparative property tax data for adjoining counties would be relevant. The Teachers felt that under the procedures agreed to by all, the School Board had the same opportunity as the Teachers in presenting whatever material supported its case and should not be, as it were, the beneficiary of the arbitration board's further initiatives in that regard.

The arbitration board took time to consider and then gave the following decision:

> "This arbitration board has the right to be satisfied that it has before it sufficient information and data on which to make a reasonable decision, even though a party cannot complain that the board has acted on insufficient or incomplete data when the board chooses to be content with the parties' initiatives in that respect.
> In the interest of keeping the hearings within reasonable bounds, this board will resist the introduction of material that is not contained in or referred to in the parties' written submissions and will restrict its own initiatives in that regard to what it considers essential, but it reserves the right to accept or request any new material that it considers important to its deliberations. The additional cost data it has requested is an example of such additional information."

The board decided not to accept the School Board's offer of comparative property tax data (made in response to the chairman's question in that respect) because it was satisfied that the basis for comparison would be sufficiently uncertain, and the weight to be attached to any such comparison sufficiently doubtful, as to render the information of too little importance to justify the time that would be required to secure reliable data and deal with all the collateral issues that would arise.

Windsor Secondary, 1975-76 - FERGUSON - p.7

Above all, the arbitrator must not in any way attempt to act on a basis independent of the positions and submissions of the parties because his mandate does not permit him to arrive at a result which he may consider appropriate as a result of his own investigation, or as a result of his involvement in other cases.

Peel Secondary, 1976-77 - BECK - p.3

The mediator-arbitrator reserves the right to use material or information gathered from the Education Relations Commission or any other source which he in his sole discretion deems relevant at any time during the mediation-arbitration process.

Lambton Secondary, 1977-78 - TEPLITSKY - p.13

In conclusion, since this arbitration was conducted toward the end of the school year when all but approximately 5 Boards had settled, we had the benefit of the valuable data collected by the Education Relations Commission. This data has made our task in attempting to reflect what these parties would have done had they been able to negotiate a settlement somewhat easier.

Renfrew Secondary, 1977-78 - SWAN - p.1

At the conclusion of the hearing, during which we received evidence and argument from each party, we indicated our desire to seek further data, especially concerning reported settlements for the 1978-79 school year, from the Education Relations Commission. Spokesmen for both parties indicated their concurrence with this approach, and we have thus sought, obtained and considered such data in making this award. The parties have also since provided us, by mail, with certain clarifications to the original briefs, and we have accepted these as well.

Ottawa R.C.S.S., 1979-80 - McBRIDE - pp.4-8

During the course of the mediation, I posed certain questions which had a bearing upon the matters in issue. Unfortunately, the information I received was, in one instance, insufficient for my purpose, and in another instance, I was informed that such information was not available. Accordingly, the question arose in my mind whether it was open for me to consult some other source for that information. In particular, I had in mind the possibility of obtaining that information from the Education Relations Commission.

Traditionally, arbitrators have confined interest awards within the ambit of submissions made by the parties as to the merits of the case. That is illustrated by the award of Dubin, J. A. who acted as an interest arbitrator in respect of a dispute between the Teachers of the Toronto Secondary Schools and their Board. He said as follows:

> "It is to be observed that the function which I have been directed to perform is that of an arbitrator. Although an arbitrator need not be a judge, an arbitrator must act judicially, and it is his duty to come to a decision based upon the merits of the case as submitted. An arbitrator is not free to act independently of the positions and submissions of the parties. His role is quite different from that of a Royal Commissioner, or of a person who has been given a mandate to arrive at any result that he thinks appropriate as a result of his own independent investigation."

The principle enunciated there was subsequently applied in an interest arbitration between The C. F. B. Petawawa Board of Education and The Petawawa Division of District 25 of The Ontario Secondary Teachers' Federation. There, the Chairman, in his award,said: "We do not think we are at liberty to undertake our own independent inquiry, or assemble our own evidentiary foundation for the conclusion which we ultimately reach -- at least in the absence of agreement of the parties that we may do so."

The question arose in my mind whether, not withstanding the foregoing statements to the contrary, I might resort to the source of supply of information to be found in the facilities of the Education Relations Commission. With that possibility in mind, I turn to an examination of the School Boards and Teachers Collective Negotiations Act, R.S.O., 1980, Chapter 464.

The first reference contained in the Act which seems to bear upon the question generally is Section 2. It provides "that the purpose of this Act is a furthering of harmonious relations between Boards and Teachers by providing for the making and renewing of agreements and providing for the relations between Boards and Teachers in respect of agreements".

Then Section 60 (after Section 59 has provided for the creation of the Education Relations Commission) provides that it is the duty of the Commission:

(c) to compile statistical information on the supply, distribution, professional activities and salaries of teachers;

(d) to provide such assistance to parties as may facilitate the making or renewing of agreements;

(e) to supply and where necessary to train persons who may act as mediators, fact finders, arbitrators or selectors;

Part IV of the Act provides for voluntary binding arbitration. Bearing in mind that the parties had agreed to submit the matters in issue here to an arbitrator, Part IV of the Act provides a code regulating the disposition of matters referred by the parties for the decision of a board of arbitration. In particular, Section 34 provides as follows:

> "34. (1) The arbitrator or board of arbitration shall inquire into, consider and decide on all matters remaining in dispute between the parties.
>
> (2) In the conduct of proceedings before him or it and in reaching a decision in respect of a matter in dispute, the arbitrator or board of arbitration may inquire into and consider any matter that the arbitrator or board of arbitration considers relevant to the making of an agreement between the parties."

Sub-section 2 is of particular importance because it affords to the arbitrator the opportunity of inquiring into in considering any matter which the arbitrator considers relevant to the making of an agreement between the parties.

Section 10 of The Interpretation Act, R.S.O., 1980, Chapter 21 provides that "every Act shall be deemed to be remedial .... and shall accordingly receive such fair, large and liberal construction and interpretation as will best insure the attainment of the object of the Act according to its true intent, meaning and spirit." There can be no doubt that the School Boards and Teachers Collective Negotiations Act was intended by the legislature of Ontario to be remedial in nature with a view to the creation and furthering of harmonious relations between Boards and Teachers and that the Commission created by the Act was to compile statistical information for the use of assistance to parties in the making and renewing of agreements and to select and train arbitrators to assist the parties in the making of agreements and that arbitrators, for the purpose of doing so, might have regard to any matter which is relevant to the making of an agreement between the parties. I consider that that would include reference to the Commission for information in its hand which would be of assistance to the arbitrator in making an award in respect of matters remaining in dispute between the parties.

With the utmost respect to the authors of those decisions to which I have above referred, I conclude that I am not confined to a decision based upon the merits of the case as submitted. I conclude that I am required by the School Boards and Teachers Collective Negotiations Act, not only to consider the merits of the case as submitted, but where appropriate to take into account any matter that I consider relevant to the making of an agreement between the parties and that such relevant matters include that information referred to in Section 60 of the Act.

C.F.B. Petawawa -
Other-Secondary, 1980-81 - MacDOWELL - pp.3-4

Before turning to the issues in dispute, it might be useful to refer briefly to two related problems which must be faced by all arbitrators who are called upon to resolve a collective bargaining dispute; namely, what is their role and what are the appropriate criteria for decision. A useful starting point is the decision of Dubin, J. A. acting as arbitrator in the 1976 Toronto Secondary School Teachers' dispute. At page 9 of his award he made the following comments about the role of an arbitrator in an interest dispute:

> It is to be observed that the function which I have been directed to perform is that of an arbitrator. Although an arbitrator need not be a judge, an arbitrator must act judicially, and it is his duty to come to a decision based upon the merits of the case as submitted. An arbitrator is not free to act independently of the positions and submissions of the parties. His role is quite different from that of a Royal Commissioner, or of a person who has given a mandate to arrive at any result that he thinks appropriate as a result of his own independent investigation.

This is the role which in our view we must play in the instant case. We do not think we are at liberty to undertake our own independent inquiry, or assemble our own evidentiary foundation for the conclusion which we ultimately reach - at least in the absence of agreement of the parties that we may do so (see Trustees of Ottawa Civic Hospital and CUPE Local 576 et al (1970) 70 C.L.L.C. ¶14,021). It is one thing to take "judicial notice" of commonly known industrial relations phenomena, generally recognized statistical trends, or the views of academic or arbitral commentators on the issues in dispute. It is quite another to gather our own statistical information, and analyze it in order to "make the case" which one or the other of the parties might have made on any particular issue. This function may well be within the province of a "fact finder", but in our view, the role of an arbitrator must necessarily be more limited. It was for this reason that we directed that the parties exchange briefs, so that both of them would be in a position to collect and put before us all the relevant data supporting their own position or qualifying that of the other party.

QUESTIONS DE PROCEDURE DIVERSES: SIGNATURE DE LA CONVENTION

Wentworth Secondary, 1977-78 - TEPLITSKY - pp.3-4

After I had orally delivered my award, Mr. Stringer supplied me with a draft collective agreement for the 1978-79 school year. The Teachers examined the draft and were satisfied with its form. They did not require, so they advised me, additional time for review of its terms.

Accordingly, pursuant to Section 37(2) of Bill 100, I fixed a time and place for execution of the collective agreement.

The Teachers failed to execute it, and pursuant to Section 37(3) I affixed my signature to the collective agreement and identified it as the collective agreement between the parties.

The parties have not signed a collective agreement for 1977-1978, although they anticipate no problems in this respect.

In any event, if the same is not executed by December 15, 1978, I will proceed again under the provisions of Section 37.

Ottawa R.C.S.S., 1979-80 - McBRIDE - pp.9-10

Mr. Light submitted, in his brief on behalf of the Board, a document compiled by the Education Relations Commission containing information relating to deferred salary plans and early retirement incentive plans (clause series number 15). The document analysed agreements and contained specimens of clauses contained in such agreements and from that document, the parties should have no difficulty in selecting clauses which will reflect the agreement that they consider to be appropriate in inclusion in their contract, now that the maximum number has been set. If it should be that the parties are unable to agree upon the terms of a deferred salary plan, then I would award the inclusion in the collective agreement plan which would correspond to that found in the above document, the provisions of the Lake Superior Secondary Board with appropriate alterations. It seems to take into account all of the matters that were referred to in the mediation discussions before me. However, I wish to make it clear that such an award would only become operative in the event the parties were unable to agree upon the terms of such a plan and with the proviso, of course, that it contain the opportunity for 12 teachers to be absent on leave in any one academic year.

QUESTIONS DE PROCEDURE DIVERSES: PREJUGE EN MATIERE LEGALE

North York Secondary, 1979-80 - TEPLITSKY - pp.2-5

On January 21, 1980, I advised the parties by telephone, subsequently confirmed by letter, that I had appointed Friday, the 25th day of January, 1980, for a preliminary meeting to identify the outstanding issues. In the course of making these arrangements, I learned from Mr. Connor that the Teachers were concerned about my appointment as mediator/arbitrator because of my having acted as mediator both in the Metro Elementary Teacher negotiations for 1977-79 and in the subsequent negotiations between the Elementary Branch Affiliates in York, Scarborough, Etobicoke and Metropolitan Toronto for 1979-81. Although Mr. Connor conceded that I was in fact impartial, it was contended that these prior involvements created the appearance of unfairness and amounted to bias in law.

I invited Mr. Connor to make representations at the meeting of January 25, 1980 in support of his position. I also notified the Board that this matter would be raised.

Mr. Connor made his submissions on January 25, 1980. He presented the matter in a dignified and courteous fashion. There was nothing personal intended in the submissions. Briefly stated, Mr. Connor raised the concern that the Employer with whom I had mediated in the prior Elementary Teacher disputes, was also the Employer of the Secondary School Teachers. He identified the Employer as the Metropolitan School Board because it exercises fiscal control. He argued that the Board's position is that there should be a single salary schedule for both Elementary and Secondary Teachers. Therefore, my involvement as mediator with the Elementary Teachers where salary was negotiated, created the appearance at least, that the salary for the Secondary Teachers would be pre-determined.

Mr. Stewart submitted that Mr. Connor's submissions, even if factually correct, did not amount to bias in law. He directed my attention to Committee for Justice and Liberty, et al vs. National Energy Board, 68 D.L.R. (3rd) 716 (S.C.C.) re W. D. Latimer Co. Limited, et al and Bray, et al, 6 O.R. (2nd) 129 (Ont. C. A.) and S. A. DeSmith, Judicial Review of Administrative Action, at pages 237 and 239. Mr. Stewart argued that these authorities indicate that my having arbitrated the Elementary contracts would not be a bar to my acting as arbitrator in this dispute. A fortiori my involvement as mediator could not have this effect.

After the arguments I announced my decision not to withdraw as mediator/arbitrator. My reasons briefly, were these: First, as mediator I only assisted the parties in reaching a settlement. The settlement is theirs, the credit is theirs and the responsibility is theirs. Such a settlement becomes like all others a collective bargaining fact which may have relevance as a comparable in another dispute. The identity of the mediator or arbitrator has nothing to do with the question of how relevant such a settlement may be as a comparable.

Further, in a general sense, experience in the administrative law area is viewed as a qualifying rather than a disqualifying fact, notwithstanding that such experience inevitably carries with it the perception in the minds of the parties that the third party neutral is identified with certain positions. Their perception of an adjudicator's "position" may quite properly influence their selection of a particular third party neutral. When, however, as in this case, they delegate the appointment to the Education Relations Commission, they face the risk that the person appointed may not be someone they would have chosen. In any event, the parties should understand that these disputes are decided on their own individual facts and particular merits.

Although the kinds of considerations which have been viewed as constituting bias in law are not present in this matter, I also considered whether I should withdraw as arbitrator simply because the Teachers have expressed this concern about my appointment. No third party neutral would ordinarily accept an interest dispute if he knew in advance that one party objected to his appointment. However, at the time I accepted this appointment, I neither knew nor had any reason to suspect that there were any concerns. Having accepted the appointment, I did not think that I should withdraw. It would set an unfortunate precedent, if third party neutrals appointed by the Education Relations Commission were removed, or removed themselves, because one side or the other preferred it. There would be no end to "shopping" if parties were permitted to exercise a de facto veto power over appointments. I know that in the past the Education Relations Commission has in the exercise of its discretion refused to remove third party neutrals when the request has been made by only one of the parties. I believe that this is a sound policy which deserves support. For all of these reasons, therefore, I declined to withdraw as mediator/arbitrator.

However, I suggested to the Teachers that I would entertain a request for an adjournment if they wanted to pursue the matter further by seeking an Order for my removal from the Supreme Court of Ontario. After caucusing, the Teachers advised me they did not wish to proceed with the issue further.

CRITERES (GENERAUX)

Metropolitan Toronto Secondary, 1975-76 - DUBIN - pp. 17-19 & 72-7.

In my opinion, education deserves a very high priority in determining what share of the public revenue should be devoted to it. It is important to appreciate the very significant place that teachers hold in our society. They are highly qualified, and require several years of post-secondary education before they can embark upon their careers. A good proportion of them, by obtaining further certification and post-graduate degrees, are continuing to improve their qualifications. It is understandable that they place a high value on their services. One cannot assume that teachers will sacrifice their own economic security out of a sense of dedication to the public. On the other hand, teachers should have a sense of satisfaction in the services they perform for the community and in the esteem with which they have traditionally been held, which cannot be compensated for in dollars.

At one time it was fair to say that teachers were grossly underpaid, but in the '60's, teachers' salaries increased in much the same way as workers' salaries in the community increased. The teachers submitted, however, that since the incorporation of Metropolitan Toronto and the introduction of ceilings in the '70's, they have failed to obtain salary increases comparable to increases granted to other workers in the community and to teachers in other municipalities. The Boards do not take issue with the proposition that the teachers are entitled to a substantial raise. The issue before me is what increase will do justice and equity to the teachers and to the public, over what period of time and on what basis.

One cannot ignore the timing of this arbitration. Every award of an arbitrator must have regard for the economic climate of the day. One need not be an economist to appreciate that the economic climate of today, even apart from the Anti-Inflation Act, as a matter of prudence at least, commands a restraint on all of us. That applies equally to the public sector as well as the private sector. Everyone is concerned about the increase in the costs of providing the services rendered by those in the public sector. As I have already observed, in order to have an efficient education system, it is essential that all those affected have regard and respect for each other, and that the teachers have the support of the public. To insist on demands, no matter how meritorious they may seem to be to the persons who are making them, that are beyond what the public may reasonably be expected to pay, having regard to their present circumstances, is a course which, in my opinion, can only do a disservice to the teachers, could endanger the very future of education in this province and the job security of the teachers themselves. That is not to say, however, that the teachers should be expected to subsidize the cost of education. They are entitled to be treated fairly and to be remunerated in a way which recognizes their qualifications, skill, experience, importance and responsibility.

The teachers have failed to attain their major objectives within a one year period, but they have gained more over a two year span than their original objectives for one year. It has been a well-established principle in arbitrations that where a group of employees fall behind others with whom a valid comparison can be made, it is not always possible to remedy that situation within one year. The impact is too great. Nor should one expect to receive substantial improvements in fringe benefits and in working conditions while, at the same time, obtaining substantial increases in remuneration.

Although I have concluded that the grievances of the teachers have been overstated, one cannot overlook the strength of their convictions. I am satisfied that the substantial increases, which are provided for in this decision, give the teachers the most that they should reasonably expect to receive at the present time, and that the salaries provided give full recognition to their responsible position in the community. I understand the desire of the teachers in Metropolitan Toronto to be the very highest paid in Ontario. Although I have endeavoured to explain why in my opinion such an objective cannot be achieved during the term of my decision, as long as any other teachers receive more, even though they be few in number, I fear there will be cause, rightly or wrongly, for disaffection. I suspect that is so in other municipalities in this province as well. Under such circumstances, I think consideration must be given to a province-wide, or regional, basic salary for teachers, and uniform fringe benefits.

Kent Secondary, 1975-76 - O'SHEA - pp. 3-7

As indicated above, the parties have devoted in excess of 18 months in their attempt to resolve their dispute. However, it should be noted that the fact that a party may remain adamant in its position does not, of itself, enhance the justness or reasonableness of its cause. Again, when adjudicating a dispute of this nature, the position of one party cannot be viewed solely from that party's perspective. To do so tends to distort the overall picture which an Arbitration Board must assess on the basis of all the available evidence.

When attempting to resolve monetary disputes involving 12 separate items, an Arbitration Board must not only consider each item as a separate issue, but must also consider the total economic package and the effect it will likely have on the public purse. Accordingly, if effect is not given to a specific teacher demand, such decision should not be interpreted as meaning that the Board does not believe that the teachers are not deserving of that specific benefit. Because the parties have agreed that the term of the Collective Agreement with which this Board is here concerned is to be for a period of only 1 year ending August 31st, 1976, we are effectively precluded from awarding any benefits which could be implemented on a gradual basis in the future. Our award, must, of necessity, be implemented by August 31st, 1976 and the full economic impact of our award will accordingly have immediate effect.

Therefore, in assessing the various items in dispute, we have attempted to keep the immediacy of their impact in mind when attempting to balance the reasonableness and justness of the teachers' demands with the ability of the tax payer to pay, without undue hardship. While it may be that the teachers fell somewhat behind what they consider to be their proper place in the economic fabric of the Province because they did not have the ability to enforce their demands which is now secured by Bill 100 which gives them the legal right to strike, it would be unrealistic to expect that they should recover in one year what they claim they have lost over the past 6 or 7 years. Although we do not suggest that it should take 6 or 7 years to recover their economic position, the economic impact in a single year might well be too severe a financial burden for the average taxpayer to bear. The fact that the teachers have fallen behind economically is not only readily established by the evidence of settlements of other teacher contracts, but indeed it is recognized by the Employers' last offer which was significantly higher than the average settlement in industry for a 1 year contract.

Just as collective bargaining is not an exact science, neither is arbitration an exact science. We therefore do not intend to imply that the settlement of the dispute which is embodied in this award is the best possible final resolution of the matters in dispute. We have, however, seriously attempted to objectively arrive at a settlement which gives effect to the proper demands of the teachers in light of the various economic factors which weigh in favour of and against those demands at this point in time and the fact that the impact of our award must be borne immediately by the Employer and the taxpayers who support it. Had the parties agreed that this Board of Arbitration should determine the provisions of a Collective Agreement which would extend for a period of more than 1 year, it may be that further steps could be taken over such extended period to remedy such inequities as may continue to exist.

However that may be, in weighing the various items in dispute we have taken into consideration the respective positions of the teachers with teachers in other secondary schools and also in elementary schools together with the evidence of salaries and benefits payable to other service classifications. We have attempted to weigh this evidence in light of the local tax structure and the evidence of wages which are currently being paid, which result from the general policy of restraint that has developed since the imposition of the Federal Guidelines administered by the Anti-Inflation Board. In this regard, we do not consider ourselves bound by the Guidelines nor do we believe we have jurisdiction to administer the Guidelines. Such jurisdiction has been entrusted to the Anti-Inflation Board. However, just as parties are free to negotiate Collective Agreements outside the Guidelines, which the Anti-Inflation Board subsequently may recommend should be rolled back, this Board similarly has jurisdiction to award a settlement that exceeds the Guidelines. The parties must recognize, however, that the award of this Board may be subject to an adverse recommendation by the Anti-Inflation Board. We have no control over the Anti-Inflation Board and therefore can accept no credit or responsibility for its actions. Indeed, we do not believe anything we say in this award should have any direct influence on the Anti-Inflation Board in its deliberations. The Anti-Inflation Board exercises a jurisdiction which is separate and distinct from the jurisdiction entrusted to this Board.

As indicated earlier, in making our award we must be cognizant of the effect of the general policy of restraint that has developed, however, the effect of this policy of restraint is but one of the factors in the economic climate which must be considered in arriving at our decision. Although we have attempted to weigh and assess all the various economic factors to which we were referred, we do not propose to attempt to tie our findings to any specific factor since many of our findings are based on a mix of factors which we have endeavoured to balance in light of the representations of the parties. Indeed, to do otherwise would be to invite further conflict between the parties since each party would likely be convinced that greater emphasis should have been placed on different factors. In making our determinations in this matter, we do so with the recognition that it is unlikely that we will be able to fully satisfy either party. It may be that the best that can be hoped for is that the reasonableness and justness of our award will be judged by the degree to which both parties are equally dissatisfied.

Our findings are also intended to reflect the fact that the Employer has had the use of the amounts herein awarded to the Teachers for approximately 10 months and it is our view that the Teachers should recover this benfit.

Leeds & Grenville Secondary, 1975-76 - ELLIS - pp. 7-12

What is an arbitration board's proper objective? Is it, for example, to preserve relationships in salary, benefits and working conditions, whether it be

a) with other employees in the community?

b) with other employees in the community providing the same or similar services?

or

c) with other employees in other communities providing the same or similar services?

And, if the proper objective is to preserve relationships then which of the relationships is to be preserved? The dynamic nature of the salaries, benefits and working conditions of each of these other groups of employees will make it impossible to preserve the relationship with each. And if a board were to decide, for example, that its main objective was the preservation of the relationship with employees in other communities providing the same services, then how should that objective be influenced by Mr. Justice Dubin's other criteria? To what extent should the main objective be sacrificed to considerations of economic climate, cost of living changes, or ability of the public to pay? Should it in any event be a question of preserving the existing relationships? The Teachers make the point in their written submissions that, historically, they have always been in the forefront of salaries and benefits paid to secondary school teachers in Ontario and are entitled to maintain

the favoured position. Is that an objective which this board should adopt? If so, why? Teachers in less-favoured historical positions will argue that catch-up or equalization is the appropriate objective. Preservation of relationships is the antithesis of equalization and yet both will be urged on arbitration boards and it is impossible to say with confidence that either approach is necessarily to be favoured as a policy over the other. And to what purpose is an arbitration board to apply the other criteria? Ability to pay is surely relevant only in a comparative sense, and how is that to be judged, as a practical matter, particularly given the compensating Provincial grants in the education field? Also, what arbitration board could ever be competent to say that the ability to pay of a particular community was so low compared to other communities that the amounts it paid its teachers, and therefore, presumably in the long run, the quality of its children's education, should be lower than other communities!?

The truth is that the question of what any given group of teachers, or for that matter any group of employees, should be paid, given the state of these various criteria, is not a question that is susceptible to rational analysis and objective and impartial judgment. It is in reality a political question, or it involves a series of decisions that are in their essential nature political decisions - should teachers retain their superior position viz-a-viz local office workers? Should a policy of preservation of the status quo among teachers be adopted or is a policy of equalization more appropriate? Should a community's low level of income or high tax rate be viewed as justification for lower standards of teacher compensation or for higher standards? What priority should be accorded the government-fostered climate of restraint? etc., etc.

In the opinion of this board, any arbitration board that tried to answer these questions would be usurping a role that it was neither competent nor authorized to fill, and yet Mr. Justice Dubin's criteria cannot rationally be applied without some specific objective. They must be factors to be considered for the purpose of answering some ultimate question.

What is that question? What issue does the Negotiation Act authorize an arbitration board to resolve?

In our respectful view, none of the awards published to date by arbitrators appointed under this Act really indicate what it is the arbitrators are attempting to achieve by the application of the various factors or criteria they mention. We believe it is essential if a board is to act judicially on the basis of the material before it and be seen to so act by the parties and the public that the ultimate question it has attempted to answer be well understood both by itself and by the parties and the public. It begs a hundred questions just to say that the arbitration board is to decide the issues in dispute on the merits of the case as submitted.

The board's duty in this regard is to determine the Legislature's intention as that may be discerned from the wording of the statute. The difficulty is that the Negotiation Act gives no express indication of intent in that respect. It merely says that arbitration boards are to "consider and decide" (section 35 (1)). Is it possible then to find the Legislature's intent implicit in its general wording or in the statutory context in which the assignment to "decide" is made?

In the first place, we believe it reasonable to conclude that in the absence of clear words to the contrary, the Legislature cannot be taken to have intended that all of the arbitration boards and sole aribtrators that have been appointed and will be appointed under this legislation in respect of individual, school board-teacher disputes across the province should be required to make their own separate decisions on fundamental policy questions such as preservation of relationships versus equalization that arise when one attempts to apply the various criteria for the purpose of deciding what teachers' salaries, benefits, and working conditions ought to be in the light of those criteria. It is possible, on the other hand, to discern a more reasonable intended role for the arbitration board by considering the place which the arbitration procedure has been given in the overall process contemplated by the Statute.

The arbitration process is one of two, no-strike alternatives the Statute gives to the parties when their negotiations are at an impasse (neither mediation nor the services of a fact finder having helped) and the next inevitable step in the usual course of collective bargaining is a strike. When one considers the extent to which the second of these two, no-strike alternatives - the final-offer selection procedure - is explicity a procedure for determining disputed issues from a negotiating perspective (as distinct from a value judgement perspective) - the selector chooses between the parties' final offers, and when one considers the voluntary nature of the recourse to arbitration and the fact that the legislation leaves it open to either party to push questions of principle on which no compromise is acceptable to a strike, it seems reasonable to this board to infer that the arbitration process must have been intended as a substitute for further negotiations - a means of resolving outstanding matters from a negotiating perspective without a strike.

We conclude therefore that the Negotiation Act intends an Arbitration board to decide the matters in dispute not on the basis of its own value judgment as to what is right, fair or proper, but on the basis of its judgment as to what the parties should have negotiated, given all of the factors mentioned above. To put it more clearly, the question we thought it appropriate to answer was this: If one were to take two seasoned and objective negotiators, one representing the School Board and one the Teachers, give each of them all of the information and data presented to this Board, allow each to assume that the other's client is prepared, if necessary, to call or take a strike as the case may be, and instruct each to negotiate a settlement of these outstanding issues on the understanding that a strike is totally unacceptable to his client, what settlement would result?

This approach has the essential merit of relieving the board of the duty of considering what resolution of these various issues would be right, proper or fair in the abstract and of narrowing the focus of its enquiries and consideration to an issue that is reasonably manageable and at least possibly within it competence.

It may be that in seeking to find a specific legislative intent in this regard we will be seen to have pushed analysis to the point of speculation. Should that be so, the only other interpretation of the legislation for which one could find reasonable support from the statutory context, in the opinion of this board, is that the Legislature intended to let the arbitration boards determine for themselves the basis of their decisions. In anticipation of that possibility, this board has decided that if a proper interpretation of the Act leaves it to the board to determine its own basis for its decision, then that basis will be as set out above - that is, the determination of how in its judgment two seasoned, objective negotiators with all the information and firm instructions to settle, would have resolved these outstanding issues.

It should be noted in passing that in relying for our interpretation of the legislative intent on, inter alia, the fact that the Negotiation Act leaves the strike option open (and thereby provides a way other than through arbitration of pursuing a question of principle without compromise should that be considered necessary), we have not overlooked the fact (specifically brought to our attention by the School Board spokesman) that the Act permits a School Board to lock-out only after a lawful strike against it has taken place (see Section 69 (1). At first blush it might appear from this that the right to push questions of principle to the economic sanction stage and thus the option to adopt a no-compromise position on matters of fundamental importance (an option that makes the limited definition of the arbitrator's role set out above more attractive from a labour relations policy point of view) is available only to Teachers. Practically speaking, however, a school board does have that option. By refusing to compromise on any particular issue and by avoiding any risk of compromise by refusing to accept arbitration or final-offer selection, a school board can effectively put its teachers in the position of striking or accepting the board's position. Failure to do either leaves the teachers in the unacceptable status quo situation.

Lambton Secondary, 1977-78 - TEPLITSKY - pp. 6-8

Before turning to the other items in dispute in detail, I proposed to state briefly the general principles which I have attempted to apply in structuring the balance of this award.

First, one should consider monetary or monetary related items from a "total compensation" perspective. Included in this term are principally wages and benefits although workload would also be a factor. However, one must exercise care in making judgments about workload based on PTR numbers without

some evidence that a lower PTR has resulted in a lighter workload. It may equally be the case that a lower PTR reflects a more extensive programme and has no impact on the workload of any individual Teachers.

Second, because both parties contended that I should look to comparables of "similar localities" and in fact previous arbitral awards support that proposition, I have proceeded on that basis. However, it should not be inferred that a different approach based for example on a provincial focus might not be preferable at this time.

Third, gains or losses which have resulted from collective bargaining over a number of years should only gradually be adjusted by a board of arbitration because gradual adjustments better reflect what the collective bargaining process would itself have achieved. Such an approach is reinforced by the current climate of economic restraint. Moreover, leapfrogging and whipsawing are not evils. They are bargaining tactics practised by both Teachers and Boards. Teachers who receive relatively lower salaries than their colleagues elsewhere have a legitimate interest in moving closer to the average. Similarly, Boards which pay relatively higher than other Boards have an equally legitimate interest in moving downward toward the average. The tempo of such movements for both the reasons previously expressed must be gradual. The collective bargaining process is not static and there will inevitably be some leapfrogging and some whipsawing.

Fourth, although interest arbitration is an adjudicative rather than mediative process, one should realistically acknowledge that the degree of precision which can be achieved in "rights" arbitrations is not available in "interest" arbitrations. There is nothing wrong in principle for an arbitrator who has identified the range of reasonable and can find no compelling reasons for an award at either extreme of that range, in taking an intermediate approach as representing the fairest possible estimate of what his award should be. It is also simplistic to assume that mediators could succeed by simply "splitting the difference" between outrageous demands thereby benefiting the party whose demand was the more outrageous. "Splitting the difference" is only an effective tactic for a mediator after both sides have moved into the range of reasonable but have remained fixed at either extreme of that range. One must also distinguish between arbitration and final offer selection in this connection. In a final offer selection a party succeeds if the selector determines that his proposal is the more appropriate. However before a proposal can be adopted by an arbitrator, not only must it be the more appropriate, it must also represent a result which the arbitrator believes is a fair and equitable disposition of the dispute.

What I am suggesting put another way is that a blanket condemnation of intermediate positions is not helpful. There is a very great difference between identifying the range of reasonable and then adopting an intermediate approach and simply "splitting the difference" between outrageous demands. I do not believe that Mr. Justice Dubin in the Metropolitan Toronto Boards of Education arbitration in 1975 intended to suggest that the approach which I have elaborated upon is inappropriate in the context of adjudication of interest disputes.

Renfrew Secondary, 1977-78 - SWAN - pp. 3-5

The parties have advanced a number of criteria from various arbitration awards, but we do not consider either to be in significant disagreement with the following quotation from K.P. Swan: The Search for Meaningful Criteria in Interest Arbitration, Queen's University Industrial Relations Centre Report Series No. 41, 1978, p. 3-4.

> [T]here is generally very little disagreement among arbitrators acting under legislation which does not set out statutory criteria that the factors to be considered include all of the above, although some additional criteria are sometimes invoked. For example, one of the most important recent decisions dealing with the selection of criteria is Re British Columbia Railway Company, a decision of a board of arbitration chaired by Mr. Owen B. Shime, Q.C. That award summarized the criteria which should be applied as follows:
>
> 1. Public Sector Employees should not be required to subsidize the community by accepting substandard wages and working conditions.
> 2. Cost of living.
> 3. Productivity.
> 4. Comparisons (a) Internal
>   (b) (i) External in the same industry.
>   (ii) External not in the industry, but similar work.
>
> The Board makes it clear that the primary principle is the first one, that of identifying some rational link between the public sector employees who are not subject to the labour market and those private sector employees who are.
>
> It is, I think, fair to say that virtually all interest arbitrations in Canada are resolved by an appeal to a relatively limited number of criteria: the ability of the employer to attact and retain competent employees, internal relativities, external relativities, changes in the cost of living, changes in productivity, the ability of the employer to pay, and a general doctrine of fairness and equity. There is probably nothing exceptionable in any of these criteria taken idividually. Each of them is certainly a relevant area of inquiry, and they should all bear, more or less, on the outcome of any public sector arbitration.

The problem, as always, is to reduce these general guidelines to a specific award based on the facts before us. Having reviewed the evidence, we are of the view that somewhat different approaches are warranted for the two school years involved in this award.

At the time of the hearing in this matter, the present collective agreement was the only one not yet settled for the 1977-78 academic year. All across the province, in secondary, elementary and separate school agreements, settlements have been reached by negotiation or by third-party intervention, and the entire pattern for salaries in public education had been clearly established. Consequently, there is little reason for us to take into account any factor other than the salaries being paid in public education in areas comparable to the area covered by the present agreement.

For the 1978-79 school year, however, such data is not available. The very few salary grids already concluded are mostly the second year settlement of a two year agreement, negotiated during the currency of the Anti-Inflation program, and settled in light of economic projections now out of date. For that year, therefore, general economic factors would appear to be of greater influence. The few settlements freely bargained during the last few months for 1978-79 have, however, a considerable effect on the conclusions which we have reached.

Lambton Secondary, 1979-80 - LADD - pp. 1-2

Before dealing with the individual matters referred to the Board, we wish to make some general observations concerning the way in which we have approached this dispute. Firstly, we are mindful of the fact that a lengthy strike has taken place and without in any sense concerning ourselves with the reasons for such strike, we think it imperative that the parties try to establish a sound working relationship and erect labour relations bridges to deal with matters of mutual concern. While our Board has the responsibility to deal only with the subjects placed before us, we must also be conscious that we cannot deal with these matters in the abstract and must be careful to find solutions that are sound in principle but are aslo workable in practice.

The Second major area of concern that motivated us is the question of economics. Unquestionably, this is a period of economic uncertainty for individuals and institutional bodies, both in Lambton County and elsewhere. In addition the specifics of the economic matters in dispute between these parties must be compared and judged, both externally and internally, especially with the terms of employment

provided by Boards of Education. In the very broad sense, we are satisfied from a careful review from all of the evidence presented to us that at least the salaries of the Lambton County Secondary School Teachers have fallen somewhat behind the appropriate comparative salaries, particularly with regard to Kent County. While any comparison with another Board is necessarily somewhat inexact, we think there are sound reasons for the use of Kent County as a significant comparison with Lambton County. Among other reasons, the Boards are comparable; they are somewhat the same size; both have a comparably City as the focus of the County - namely Chatham in Kent and Sarnia in Lambton; both have extensive rural areas; both have dormitory areas for the industrial complexes in each of the cities.

We do not wish to suggest that we have ignored the other comparables that were provided to us by both parties. Indeed, we have examined all of this information and we have found it most useful to us in coming to the conclusions that we have reached. At the same time, all of this data has impressed upon us the need for ensuring that the provision of a catch-up element does not become an onerous financial burden on the taxpayers of the County. It is for this reason that we have endeavoured to phase in, on a gradual basis, the amount of wage increases that is required to reach a rough but equitable balance as to the salaries of the Teachers in Lambton County and Kent County, as well as those employed by other comparable Boards of Education. This approach, we feel, is not only proper but is consistent with the representations of the parties themselves to us and with the opinions and awards of other arbitrators.

Canadian Forces Base Petawawa Secondary, 1980-81 - MacDOWELL - pp. 4-8, 17-18

What are the general criteria on which we should base our decision? The School Boards and Teachers Collective Negotiations Act, R.S.O. 1980, c. 464, does not provide an answer. It merely states that the Board may consider "any relevant matter". But this does not mean that we must make our decision in a vacuum. Interest arbitration is not a new phenomenon. It has been an established part of the industrial relations scene for many years. Both arbitrators and legislators have had occasion to enumerate the factors which are arguably relevant to the issues in dispute; and there is surprisingly little dissent about which criteria should properly command an arbitrator's attention.

The federal Public Service Staff Relations Act, R.S.C. 1970, c. P-35, as amended, s.68, sets out the following list of factors which an arbitrator should consider:

a) the needs of the Public Service for qualified employees;

b) the conditions of employment in similar occupations outside the Public Service, including such geographic, industrial or other variations as the Arbitration Tribunal may consider relevant;

c) the need to maintain appropriate relationships in the conditions of employment as between different grade levels within an occupation and as between occupations in the Public Service;

d) the need to establish terms and conditions of employment that are fair and reasonable in relation to the qualifications required, the work performed, the responsibility assumed and the nature of the service rendered;

e) any other factor that appears to be relevant to the matter in dispute.

A virtually indentical list is contained in the Ontario Crown Employees Collective Bargaining Act (S.O. 1972 c. 67 as amended). Owen B. Shime, Q.C., sitting as an arbitrator proposed a slightly different set of considerations:

1. Public Sector Employees should not be required to subsidize the community by accepting sub-standard wages and working conditions.

2. Cost of Living.

3. Productivity.

4. Comparisons (a) Internal

(b) (i) External in the same industry,

(ii) External not in the same industry, but similar work.

(See British Columbia Railway Company, unreported award, June 1, 1976.) Professor K. Swan, a frequent arbitrator under The Police Act, R.S.O. 1980, c. 381, had this to say:

> It is, I think, fair to say that virtually all interest arbitrations in Canada are resolved by an appeal to a relatively limited number of criteria; the ability of the employer to attract and retain competent employees, internal relativities, external relativities,

> changes in the cost of living, changes in productivity, the ability of the employer to pay, and a general doctrine of fairness and equity. There is probably nothing exceptional in any of these criteria taken individually. Each of them is certainly a relevant area of inquiry, and they should all bear, more or less, on the outcome of any public sector arbitration. To the extent that interest arbitration has failed, it has not been a failure to identify and select criteria but rather a failure to structure them, and to create from them a mechanism for determination of interest disputes which will permit reasonable predictability and which will in general lead to results commanding the mutual approval of both of the parties to the dispute.

(See: The Search for Meaningful Criteria in Interest Arbitration, 1978, Queen's University Industrial Relations Centre, Reprint Series.)

Arbitrators have generally eschewed "fairness" as an appropriate criteria in interest arbitration because it is too vague and not susceptible to quantification. It is simply impossible to fix with any precision the "social worth of a job", and, in practice, fairness remains an essentially relative concept depending upon the identification of a "fair" comparision. It must also be recognized that the questions posed to an arbitrator can never be answered with scientific accuracy - especially in the absence of a neutral, fully funded pay research bureau which can establish appropriate analogius in the general labour market, develop means of assessing internal relativities, and process the raw data taking into account differences in fringe benefits, security of tenure, promotion or advancement opportunities, and similar factors which may bear directly on the principle of fair comparison. Moreover, the parties must be willing to reply upon and use such data; and, even then, the task of the arbitrator is to identify what might be called the "range of reasonableness". In the Kirkland Lake Board of Education (unreported decision, March 31, 1981 (Burkett), the arbitrator put it this way:

> I start with the proposition that adjudication of salary levels for public sector employees is not a science in any sense of the term. There is no mathematical formula which will produce the correct result. Rather, the exercise requires the balancing of a number of criteria in an effort to achieve a result which falls somewhere within an equitable range; equitable in terms of those who must live under the result and those who must pay for it ...

To do this requires evidence. As will become apparent, this is what is often lacking in the instant case. (Note: For a good analysis of the criteria for public sector wage

determination from a labour economist's point of view, see: M. Gunderson, Criteria for Public Sector Wage Determination, Anti-Inflation Board Discussion Paper, Ottawa, 1977. The paper also contains a short critique of the various criteria and a selected bibliography).

We have set out this long introduction to our Award in order to explain the unique situation in which this Board finds itself. We have before us, on the one hand, an employer position which consists of an assertion that Renfrew is the only relevant factor for our consideration, but which is otherwise substantially unsupported by evidence or argument with respect to any of the factors which arbitrators usually consider relevant. We are simply asked to give effect to the administrative fiat of the D.N.D. On the other hand, we have a teacher position, framed along more traditional lines, which is substantially uncontradicted. And both parties accept that the situation of the base school is in many respects unique. In the circumstances, we have had some difficulty fashioning an award which we can be confident falls within the "range of reasonableness". However, our responsibility is to decide the issues on the basis of the evidence before us, and that is what we have done. It will be convenient to deal with the issues in dispute, one by one, beginning with those which are most easily resolved, then turning to those which are more difficult. Unless our award specifically directs the contrary, it is our intention to preserve the status quo - that is, the provision of the existing collective agreement as amended by the parties themselves during negotiation or, as necessary, to reflect the change in contract year. For ease of exposition, we will occasionally refer to, reject, or endorse the position of one or the other of the parties without setting out all of the details thereof. Those positions are set out at some length in the parties' briefs, and it is unnecessary to repeat all of the details here.

TRAITEMENTS: GRILLE DES ENSEIGNANTS

Metropolitan Toronto Secondary, 1975-76 - DUBIN - pp. 22-50

It is not a pleasant task nor an easy one to put a price on other people's services. Bill 1 does not provide for any criteria, nor does there appear to be a uniformity as to what criteria have been used in the past in arbitrations for employees in the public sector. Indeed, many awards have been delivered without reasons.

There are yeardsticks which I think are relevant. In my opinion, the following factors, not set forth with any particular priority, must, at least, be taken into consideration:

1. The overall compensation presently received by the employees involved in the arbitration proceedings, including direct wage compensation, vacations, holidays and other excused time, insurance, pension, medical and hospitalization benefits, continuity and stability of employment, and all other benefits received;

2. A comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees generally, (1) in public employment in the community, and (2) in private employment in the community;

3. A comparison of the wages, hours and conditions of employment for the employees involved in the arbitration proceedings with the wages, hours and conditions of employment with other employees performing similar services within the same municipality and in comparable municipalities;

4. The average consumer price for goods and services commonly known as the cost of living;

5. Changes in any of the foregoing factors during the relevant period of time;

6. The economic climate of the day, including consideration of the gross national product and of the gross provincial product;

7. The interest and welfare of the public, and the financial ability of those who are called upon to pay the cost of the services being rendered.

In arriving at an award, all these factors must be taken into consideration and not merely one.

CONCLUSIONS:

I have concluded that, with a few exceptions, nothing has been put before me which would warrant any increases in the monetary items beyond those which were proposed by the Boards. I have

arrived at the conclusion only after carefully and anxiously considering the mass of material presented and the extensive arguments submitted by counsel, and after weighing all of them against the criteria which I have set forth above.

In addition to the increases in the salary scale set forth above, *[salary scale omitted]* the Board of Education have proposed a cost-of-living allowance in the second year of the contract, plus an increase in other allowances, and a $500 payment in the first year of the contract for certain teachers by reason of the abolition of the merit plan, all of which items will be discussed separately.

Applying the Boards' proposal to those persons in the bargaining unit as of January 31, 1975, and on the assumption that all those in the bargaining unit as of that time remained in the bargaining unit throughout the school years 1975-76 and 1976-77, the Boards' proposal would amount to an average increase for all persons in the bargaining unit of 24.6% in the first year and 39.2% over two years. On the same basis it represents for the teachers an average increase in salaries of 40% over the two years, and for those holding positions of responsibility an average increase of 28% over the two years. This includes the allowances received by the teachers over and above their basic salary and the cost-of-living allowance on the basis of an estimate of only 6% from September, 1976, to September, 1977.

The teachers take issue with this method of calculation. Their contention is that they are negotiating for an increase in salary for each position. In determining the percentage increase negotiated, the teachers submit that the increment should be eliminated from any calculation. They also take issue in annualizing any lump sum allowance and they would isolate the cost-of-living allowance from the negotiated increase on the grid and itemize it separately. As calculated by the teachers, the Boards' proposal would represent approximately a 21.5% increase in the first year and 32% over two years, plus the additional amount for the cost-of-living allowance. However, since the cost-of-living allowance is to be "folded in", resulting in an adjustment in the actual salary scales, about which I will have more to say later, it does, in my opinion, become a salary item. There is, I think, merit in the submission of the teachers that the increment should not be included in ascertaining the amount of the negotiated increase for the new contract, but it must, in my opinion, be included in any comparison which is made with increases in average wages gained by others.

In my opinion the salary increases proposed by the Boards, however they may be calculated, are very substantial and fully meet all the valid arguments that the teachers have made out for a salary increase.

Much has been said on behalf of the teachers that over the last several years they have failed to receive salary increases commensurate with those received by others in this municipality. In support of that submission they relied on the Industrial Complex Average for Metropolitan Toronto (hereinafter referred to as the I.C.A.). The I.C.A. of Metropolitan Toronto reflects the gross pay, including salaries, straight time wages, piecework,

overtime earnings, regular comission earnings, regularly paid incentive, cost of living and other bonuses and payments to persons absent with pay, of a complex of companies having twenty or more employees in Metropolitan Toronto.

The teachers relied on this compilation in support of their submission that they have fallen behind the average wage increase as reflected in that survey. They did so by analysing the percentage increase in the I.C.A. and comparing it to the increases on the minimum and maximum salary scales. However, since the I.C.A. reflects average salaries, the only valid comparison, if any, is to compare it with the average salaries of school teachers.

It is to be observed that in the years 1972 and 1974 the percentage increase granted to teachers fell slightly below the percentage increase as shown in the I.C.A. statistics. However the above schedule *[omitted]* demonstrates that if the Boards' proposal were adopted, the teachers will have increased their salaries by 13.3 percentage points above the I.C.A. from September, 1971 to September, 1975, and by 19.9 percentage points on projected figures for 1976. Both parties agreed that this projection was a reasonable one.

The above schedule also demonstrates that, in each of the years set forth in the schedule, the salary increases obtained by teachers were a higher percentage than the corresponding percentage increase in the cost of living. I recognize that there are frailties in such a comparison since it is hard to compare teachers with employees who are included in the I.C.A. It is useful only as a guide in that it does show the average increases received by a large group of employees in Metropolitan Toronto during the relevant period.

Furthermore, in such a comparison salaries cannot be looked at in isolation. Fringe benefits and working conditions are a significant feature in anyone's employment. By the nature of their profession, the teacher's work is confined within a ten-month period. Within this ten-month period the teachers receive two one-week breaks plus six statutory holidays. They have a relatively shorter work day than most, although additional time is required by them for preparation and other ancillary work, and many of them do devote extra time to extra-curricular activities. Their fringe benefits include contributions to group life insurance, extended health benefits, O.H.I.P., Canada Pension Plan, and they receive such additional benefits as sick leave, accumulated sick leave and sick leave gratuities. They are also in receipt of a provincially guaranteed contributory pension plan. In short, it is fair to say that the total package of fringe benefits surpasses most, if not all, that those employees included in the I.C.A. compilation receive.

I have also considered salaries paid to those who teach in community colleges and in universities. I have compared their salaries with the salaries paid to teachers in Group 4, which is the highest salaried group. A teacher at his maximum in Group 4 in 1974-75 was paid a basic salary of $18,400. That teacher for the school year 1976-77, on the basis of the Boards' proposal, will

be paid a basic salary of $24,820. This does not include the cost-of-living allowance or any of the other allowances which almost all such teachers receive. Those salaries compare favourably with salaries paid to the teaching staffs in community colleges and in universities.

The elementary school teachers in Metropolitan Toronto accepted this very proposal.

I have also considered increases in salaries to policemen and firemen, both of which groups have received dramatic increases over the years. But again I am satisfied that the teachers, on the basis of the Boards' proposal, are relatively holding their own with those two groups. I do not think that a comparison with other professional groups is particularly helpful since the vast majority of those are in private practice and their working conditions are completely different.

It is when a comparison is made with the salaries paid to secondary school teachers in other municipalities in this province that the teachers make out their strongest case for a substantial increase in salary.

Appendix 4 sets forths a comparison of salaries paid to secondary school teachers in Metropolitan Toronto in the year 1973-74 with salaries paid to secondary school teachers in a group of municipalities selected by the teachers, which municipalities appear to pay the highest wages to secondary school teachers in the province.

Appendix 5 is a similar comparison for the year 1974-75.

It does not appear from an examination of those Appendicies that the relative position of the Metro secondary school teachers suffered in comparison with others in the schedule even when the amendment made to the salary scales in Metro in June, of 1974, which is not reflected in that schedule, is taken into consideration. Other Appendicies filed by the teachers, however, disclose that even prior to the school year 1973-74, the salary scales in most of the municipalities referred to in the schedule were, on the whole, higher than in Metropolitan Toronto.

That comparison shows a substantial closing of the gap, and, once again, save for Nipissing which appears always to have been much higher than the others, the Metro secondary school teachers' salaries compare favourably with the highest paid in Ontario. What has transpired, however, is that certain municipalities, particularly Carleton and Ottawa, have agreed to pay, in the case of Ottawa for the period January 1 to August 31, 1976, and in the case of Carleton for the period January 1 to December 31, 1976, salaries at a higher scale than is proposed by the Boards for Metro for those periods.

Although the teachers in Toronto have been amongst the highest paid teachers in Ontario, it is not accurate to say that they have always been the highest. What is now being sought by the teachers is a salary scale which is said by them to be higher

than all other teachers in Ontario, save for Nipissing, and in some categories higher than in Nipissing, and substantially higher than what is being paid by the other municipalities in the above schedule.

Appendix 6 is a calculation based on the same premises as Appendix 3 reflecting the impact on what is being asked for by the teachers. On that basis and on the same premises, the average increase in salaries for all those in the bargaining unit as of January 31, 1975 would have increased by 42.3% in the first year and 57.6% in the second year. In my respectful opinion, such an increase is completely unrealistic having regard to the present economic climate, and is so even when it is calculated in the manner submitted by the teachers.

To accede to this proposal would be to accept the principle of "leapfrogging" or "whipsawing" which has played such a prominent part in the bargaining process for a long time. It would in turn encourage others who had received higher salaries than the Metro teachers to urge that their salaries, having at one time been higher than Metro, should again be "leapfrogged" above the Metro salaries and on and on it would go. To give effect to such a submission could, in my opinion, put the cost of education beyond the financial ability of both the municipalities and the province and threaten the very future of education in this province. The fact that one municipality chooses to pay a much higher salary than others, which may be completely unjustified and beyond what is reasonable at this time, cannot be the sole foundation for an increase to school teachers employed in all other municipalities. The fact that other municipalities are paying higher is certainly a factor to be taken into consideration in giving effect to a substantial increase for the Metro school teachers, but it cannot be a justification for the granting of an award which is beyond what is fair and reasonable. Other criteria must be considered.

If one does not put an end to the "leapfrogging" and "whipsawing" arguments, which have apparently been given effect to in the past, the last leap could bring about an economic crisis. It has happened elsewhere.

The teachers, quite understandably, relied on what is described by them as the fact-finder's report. Mr. Hartt, the author, quite frankly stated, "the term 'Fact-Finder' may be a misnomer, and I wish to point out at the outset that while much of this report will contain facts, some of it will be based on the opinions of the undersigned".

In that portion of his report where he made recommendations on many of the items with which I am dealing, I think it is fair to say that he was acting in the capacity of a mediator and was recommending what he though could constitute a basis of settlement.

In discussing the Boards' proposal, which is now before me, he stated in part:

> "...<u>In any other circumstances, in any other climate</u> the offer of the School Boards as submitted during negotiations would have to be regarded as the extreme limit of generosity." (Emphasis added.)

DECISION:

Since I have concluded that, subject to a few exceptions, there would be no justification to award a monetary package greater than that which has been proposed by the Boards, it remains now to be decided whether I should adopt the Boards' proposal.

As I have outlined earlier, as an arbitrator I must decide the matters in dispute within the framework of what is submitted to me. In my view, anything below what has been submitted by the Boards is not in dispute. However, with the framework of Bill 1 and Bill 100 pursuant to which I am acting, even if I had jurisdication to do so, I would not have awarded less that what the Boards have submitted.

The Boards' submission is one which would once again establish parity between the teachers in the elementary school system and in the secondary school stystem of comparable qualifications and experience. I was advised that this historical relationship has existed for some twenty years. The Boards, I think, properly recognized that they could not make a proposal which amounted to less than what the elementary school teachers of comparable qualification and experience, their own employees, are receiving in Metropolitan Toronto for comparable work. The Boards have stressed the desirability of continuing to expand the integration of elementary and secondary school systems. To give less to secondary school teachers than the elementary school teachers receive could be destructive of that objective. In the earlier negotiations the Board had made this very proposal. That could only lead to the reasonable expectation of the teachers that they would receive no less. To award something less, in my view, could well be destructive of the morale of the secondary school teachers even though at one time they had rejected this very proposal.

The purpose of Bill 100, within which framework I am acting, is the furthering of harmonious relationships between Boards and teachers. To award less, I think could create disharmony. Furthermore, it does appear that some secondary school teachers in comparable municipalities are being paid at a higher salary scale that I have decided is appropriate in this matter. Although I have rejected the argument that that fact alone would warrant an award larger than is being awarded here, it is, I think, relevant in determining whether the proposal of the Boards is justified. The Boards have stressed the importance to have teachers' salaries in Metropolitan Toronto competitive. The effect of implementing the Boards' proposal would, I think, make the teachers' salaries in Metropolitan Toronto competitive since they would be amongst the highest in Ontario.

Although, by this decision, the teachers will be receiving a higher percentage increase than most other employees are presently receiving, it must be recognized that they did fall behind in a relative way with what was paid other secondary school teachers in certain other municipalities in their last contract years. It does, therefore, take a relatively higher percentage increase to establish comparable rates for them and to effect a parity with

the elementary school system. It is also not to be overlooked that the remuneration in this matter is one which is being imposed on both parties to the dispute. It is not being voluntarily entered into by either of them which I think is a factor which much also be taken into consideration.

I would, therefore, direct that the salary scales and cost-of-living allowance proposed by the Boards become effective as of September 1, 1975 and remain in effect until August 31, 1977.

I am satisfied that this represents a very substantial gain for the secondary school teachers in Metropolitan Toronto, restores their relative position with most of the secondary school teachers in Ontario, that it does justice and equity to them and is in the public interest.

Kirkland Lake Secondary, 1975-76 - JOHNSTON - pp. 17-49

b) <u>The Criteria Applicable</u>

Before analyzing in detail the positions of the parties it is important to establish the framework or standard against which those positions are to be measured. Looking first at models outside the educational sphere, a Commission of Inquiry appointed by the Minister of Labour assessed the experience of compulsory arbitration under the Hospital Labour Disputes Arbitration Act, R.S.O. 1970, c. 208, and reported in November, 1974 (Report of the Hospital Inquiry Commission). That report concluded that the legislation was deficient and the compulsory arbitration technique had developed a series of problems in that field, due to the absence of express criteria for awards in the legislation. That report recommended that criteria be legislated as appropriate for compulsory arbitration in the hospital field which would reflect:

> "The need to ascertain and preserve appropriate relationships in the conditions of employment (a) as between occupations in public hospitals; and (b) as compared to similar occupations outside public hospitals with due regard for the labour market areas."

Bill 100 establishes a different collective bargaining regime for education. Thus analyses from the Hospital Inquiry Commission report referred to above are not entirely apposite. For example, Bill 100 legalizes the right to lockout and strike thus permitting agreements to be determined in some instances by the ultimate economic sanctions and putting ability to pay arguments to an economic test. However, there are limitations on these rights as Bill 1 and Bill 2 dramatically demonstrate. Moreover, even in an environment permitting full use of the strike and lock-out sanctions some reference to criteria for judging the appropriateness of settlements would be necessary if agreements were ever to be achieved. And I believe that a compulsory arbitrator in the education field should attempt to use criteria which a reasonable

observer at the bargaining table would conclude were appropriate to bargaining before compulsory arbitration were imposed.

Mr. Justice Dubin in the Metropolitan Toronto award (p.22) suggested the criteria set out below as appropriate standards for the determination of teachers' remuneration:

> "There are yardsticks which I think are relevant. In my opinion, the following factors, not set forth with any particular priority, must, at least, be taken into consideration:
>
> 1. The overall compensation presently received by the employees involved in the arbitration proceedings, including direct wage compensation, vacations, holidays and other excused time, insurance, pension, medical and hospitalization benefits, continuity and stability of employment, and all other benefits received;
>
> 2. A comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees generally, (1) in public employment in the community, and (2) in private employment in the community;
>
> 3. A comparison of the wages, hours and conditions of employment for the employees involved in the arbitration proceedings with the wages, hours and conditions of employment with other employees performing similar services within the same municipality and in comparable municipalities;
>
> 4. The average consumer price for goods and serives commonly known as the cost of living;
>
> 5. Changes in any of the foregoing factors during the relevant period of time;
>
> 6. The economic climate of the day, including consideration of the gross national product and of the gross provincial product;
>
> 7. The interest and welfare of the public, and the financial ability of those who are called upon to pay the cost of the services being rendered.
>
> In arriving at an award, all of these factors must be taken into consideration and not merely one.

In general terms I accept and apply these criteria employed by Mr. Justice Dubin, although I see criterion 6, the economic climate of the day, more as a <u>leitmotiv</u> wearing through the fabric of the other criteria and not readily susceptible to separate analysis and application. In adopting this framework I draw some comfort from the fact that the very considerable body of data cogently and

thoughtfully presented by the parties relates quite directly to these criteria.

Within the general framework of these criteria there were a number of particular factors that each party suggested as appropriate to a consideration of how these criteria applied. I shall deal with the most relevant of these (and the most relevant arguments and evidence in support of them) in turn with certain conclusions in seriatim before arriving at the final determination on salary schedule.

c) Acceptance by the Anti-Inflation Board

The Board took the position that the agreement which would have the greatest chance for acceptance by the Anti-Inflation Board ("the A.I.B.") or the risk of least amount of rollback would be one which best recognized the historical relationship between the elementary school teachers' agreement and the secondary school teachers' agreement here under consideration. Accordingly, the Board suggested that rather than applying its last offer of March 2, 1976 I should take the elementary teachers salary grid as was settled upon by the trustees in a negotiated agreement concluded on December 18, 1975 by simple extra polation and adoption of that salary schedule applying it to the secondary school teachers. This would have the effect of lowering the total grid package by 1.3% from the Board's March 2, 1976 offer for the 1975-76 grid and a smaller lowering of the March 2 offer for the 1976-77 year.

The Teachers responded to this proposition by pointing to the fact that in a number of previous negotiations and in the current round, the elementary school agreement had been signed earlier but it contained a clause stating that, if a higher settlement was agreed to in the secondary school agreement for comparably qualified teachers, then the elementary school agreement would be amended upwards to establish complete pariety. Such a clause is contained in the elementary school agreement signed this past December. Accordingly, it seems that a rough pariety between the elementary school and secondary school agreement will be established and the historical relationship will be preserved before this agreement goes to the AIB. Moreover, I would be loathed, unless the circumstances were very compelling, to effect a salary settlement lower than the Board's last offer. It is apparent that the negotiations were strenuous and sincere and that the parties strove to arrive at a settlement which would be as fair to both sides as possible. Indeed, at one point, they were little more than 1% away from settlement. It would take rather compelling circumstances to cause me to conclude that evidence of those neotiations is not of some value in determining an appropriate settlement. Furthermore, as I point out elsewhere, I believe it be be beyond my jurisdiction to speculate on what, if anything, the A.I.B. or any other external authority might do to a compulsory arbitration award arrived at under Bill 2.

f) Structure of the Grid

In response to a recommendation of the Fact Finder, the Board reduced in its proposal the number of years required to progress to maximum salary on the grid to a maximum of eleven years in each of the four categories for 1975-76 and ten years for each of the four categories in 1976-77. This coincides with the Teacners' request on grid structure. The compression of the grid is responsible for 6.6 percent of the total increase in cost of the settlement.

This reduction in the grid structure brings Kirkland Lake very favourably in line with other boards both throughout the province and in the geographically proximate areas. As indicated in the chart below *[omitted]* since 1970 Kirkland Lake has been less than competitive with the most generous boards in the geographically proximate areas with respect to years to maximum on the grid.

I attach some significance to the fact that the Board's offer by itself would effect a significant improvement in the historical position of Kirkland Lake vis a vis its neighbours with respect to years of service to maximum.

Another chart supplied by the Teachers displayed in graph form the category I minima and category IV maxima for the same five boards since 1970. From that chart it appears that Kirkland Lake has never been a leader amongst the five although Kapuskasing and Temiskaming have at various times and from their latest settlements it is apparent that North Bay and Kapuskasing have assumed a position of salary leadership.

g) Catch Up

The Teachers contended that their request was necessary to effect an appropriate catch up to restore lost purchasing power. They supplied data showing that the salaries of secondary school teachers between 1967 and 1974 fell 16 percent behind the increase in the consumer price index. These data exclude the value of increment.

The Board supplies figures which analysed the relationship between average teacher salary and cost of living for an additional two years including 1975 and 1976 based on its March 2, 1976 offer. These figures set out below do not exclude increment but because they deal with an average teacher's salary include it and any improvement by a teacher in movement across categories in the computation. Because of this these Board figures are less useful than they might have been if increment and cross category improvement had been excluded for purposes of comparison to C.P.I. increases.

It is apparent that the Teachers' data begins with a 1967 base and the Board's with a 1969 base, but that the Board's calculations include the latest offer.

The information supplied to me does not show exactly how the Board offer (costed to exclude increment) or the Teacher request (costed to exclude increment) would relate to the C.P.I. increase from 1967 or 1969 to September 1975. However, taking the Teachers' costing under heading e) above, its request for 1975-76 would constitude a 30.5% increase over 1975-75 at a time when the C.P.I.

rose by 13.2%. The remaining 17.2% would more than compensate for the fall in teachers' salaries 16% below the C.P.I. in the long period from 1967 to 1974.

It seems that to effect a more than compensating catch up in one year for a deterioration over seven years would be considered generous.

h) Comparison With Other Secondary School Teachers Salary Scales Across the Province

The Board submitted that its March 2, 1976 offer would ensure that its salaries compared very favorably with those paid generally throughout the province and would ensure that Kirkland Lake was well established in a higher paying bracket. It produced the following comparison to substantiate this claim. *[comparison omitted]*.

I agree with this submission by the Board but because the sampling is so limited it does not take us very far. Moreover, I do not give overwhelming relevance to this data because it appears that Kirkland Lake teachers traditionally have been highly paid in comparison with the rest of the province. Hence, for comparative purposes reference to salaries in the same geographical area and for community conditions more closely proximate to that of Kirkland Lake is more apposite. To that comparison we now turn.

i) Salary Comparisons With Neighbouring Boards

Both parties referred to comparisons among approximately 1,000 teachers in the "highway 11 corridor" which includes the Nipissing board with approximately 360 teachers, the Kapuskasing board with approximately 150 teachers, the Kirkland Lake Board with approximately 95 teachers and the Timiskaming, Timmins, Cochrane-Iroquois Falls and Hearst boards making up the balance. The Board, though not the Teachers, referred to the Sudbury board as comparable and geographically related as well.

It is apparent from this comparison that under the Board offer the Kirkland Lake salary schedule would compare well with others in the region including Sudbury but would not match Nipissing and Kapuskasing precisely in 1975-76. Because the Nipissing and Kapuskasing agreements for 1976-77 will have to be negotiated and since the present agreements with those two Boards have a cost of living allowance clause with the cost of living increase folded into the base from which negotiations for 1976-77 take place, Nipissing and Kapuskasing might well continue to lead. It would seem that this is essentially the numb of the issue on salary matters, whether the Kirkland Lake Board should be roughly equal to Nipissing and Kapuskasing or whether it should be in the middle range with its geographically related boards.

I am not convinced that Kirkland Lake should become a leader or near leader through compulsory arbitration, unless there are unusual circumstances which would commend this result. First, from the evidence available to me it seems that the Nipissing Board

is the highest in the province (though in the absence of complete data and pending settlement of some agreements under negotiation it is impossible to be sure) and that level of remuneration was achieved through voluntary agreement. Second, from the information supplied to me on the maximum level on the grid for each of the four groups and number of years to achieve that maximum over the period of the last five years it appears that Kirkland Lake was never at the top of the range compared with other boards in the region. Third, if Nipissing has been established as a leader in the region and in the province, it would not be appropriate to bring Kirkland Lake into a rough match up position so that Nipissing and perhaps Kapuskasing in the next round of negotiations about to commence would be forced to leapfrog ahead. In this connection I am conscious of the very direct comments made by Mr. Justice Dubin in the Metropolitan Toronto award (p. 39-40) where he adopted a very negative stance on the leapfrogging practice. Finally, I am conscious that the Kirkland Lake Board has already taken certain steps in these negotiations to bring it closer to Nipissing and Kapuskasing in grid pattern and that the decisions which I make later in connection with fringe benefits will ensure that Kirkland Lake compares favorably in that category of items which are part of the overall monetary package.

j) Comparison With Local Wage Settlements

The two parties suppled different data on this issue.

The Teachers produced figures for the period 1967 to 1974 showing that the salaries of secondary school teachers fell 71 percent below the increase in the composite salaries of other local employees drawn from the public sector including the R.C.M.P., hydro, mine workers, nurses, laboratory technologists, town workers, police and firemen.

The Board supplies a summary of local wage settlements for 1975 with both public and private employees.

It is apparent that neither of these two sets of data is entirely apposite. The data from the Teachers concentrated on the public sector only when, based on the criteria from the Metropolitan Toronto award set out earlier, referenced to the private sector is appropriate. Second the Teachers' data do not consider the most current two years and the impact of the Board's offer. The data supplied by the Board are not entirely apposite because they focus on one year only and refer to categories of employment which do not have the same professional and educational qualifications appropriate for teachers. Nevertheless, as a general conclusion from this data, I believe that the Board offer of March 2, 1976 must be considered a favorable one in the context of prevailing local settlements as seen currently and over a period of previous years and would be regarded by other employees in the community as a reasonably generous one.

k) Comparison With Local Community College Masters

The Board supplies the following comparison of its offer with that of the salaries paid to the masters in the local community college.

Ontario

The Board indicated that the two groups compared were roughly equivalent in qualifications with only minor discrepancies. This submission was not countered by the Teachers. It is apparent that the Board offer is considerably more generous than salary rates prevailing in the community college. Moreover, as a minimum, it would seem that KLCVI would not suffer with regard to retention of faculty because of monetary factors as a result of competition from the local community college.

l) Comparison with the Kirkland Lake District Roman Catholic Separate School Board

A similar situation prevails when the Board offer is compared with the 1975-76 settlement (prior to October 14, 1975, the date the anti-inflation guidelines were announced) for the Kirkland Lake District Roman Catholic Separate School Board. The Board offer is better by significant measure than that settlement. I do not attach great significance to this comparison since no particular emphasis was given to it by the Board and no substantial amount of evidence of relationships of secondary school salaries to Roman Catholic elementary school salaries was referred to by either party. However, this conclusion at least is possible. KLCVI would not lose staff to the Kirkland Lake District Roman Catholic Separate School Board because of monetary factors and, indeed, might attract qualified teachers from that board if only monetary incentive was a factor of importance.

m) Comparison of Board Offer and Elementary Settlement

I have already discussed this comparison in connection with the Board's submission regarding the anti-inflation guidelines.

On balance the Board offer was greater than the elementary school settlement. However, the Teachers submitted that that should not be a persuasive factor because the elementary school agreement has a clause which would establish a step-up to maintain parity with equivalently qualified teachers in the two systems should the secondary school agreement be higher. Accordingly, it is possible that the elementary school agreement will be amended in accordance with that clause and parity be established. Apparently, a similar clause has existed in previous years in the elementary school agreements and the appropriate step-up has been effected. Because of this arrangement I give no further significance to the relationship to the elementary school settlement.

n) Retention of Staff

The Teachers contended that the Kirkland Lake Board faces severe hiring problems and that monetary compensation less than the Teachers' request would seriously affect hiring and would eventually effect the traditional quality of education in Kirkland Lake. The teachers supplied an appendix from KLCVI's Principal which documented a number of instances of hiring difficulties.

The Board counterd with the argument that the instances documented were for the 1975-76 school year based on 1974-75 salaries since the new salaries had not yet been agreed to and that they were highly peculiar instances of needs for people with special

qualification who would be hard to find anywhere in the province. The Board also contended that monetary incentives, unless they were very large, would not have an appreciable effect on bringing such people to Kirkland Lake. A decision to make a home in the Kirkland Lake region would be based more substantially on a decision that there are either very positive advantages to the quality of life to be enjoyed there or that the region was not a suitable one for the particular individual, monetary considerations aside.

Figures were also produced which showed that the retention rate for natives of the Kirkland Lake region was very considerably higher than that of non natives coming to the area to teach for the first time. This provides some support for the Board's argument that quality of life factors rather than substantial monetary incentives would be an important factor in the ability to hold staff. Finally, there is a fact that enrollment at KLCVI has declined considerably (from 1938 students in 1970 to 1675 in 1975) and will probably continue to decline over the next few years so that staff needs should diminish reducing the problems of hiring new staff.

I am satisfied on the issue of retention of staff that it is not a problem of major magnitude which is answerable to a monetary remedy. I am satisfied that an award based on the Teachers' request as opposed to the Board's offer would not be a matter of major significance with respect to retention of staff. I am also satisfied that the Board's offer ensures that KLCVI is reasonably competitive from a monetary basis with its chief competitors - other educational institutions in the same community and those in surrounding areas.

o) Ability to Pay - Educational Finance

The financing of education in Ontario is complicated. Since 1969, the province has distributed funds to local boards for the support of education by means of a percentage equalizing formula for operating expenditures. The effect of this grant formula is to equalize the availability of funds for the board with the lowest per pupil assessment to the board with the highest. Thus, no local area has to make a greater taxation effort than any other area in order to spend at the same level. The Kirkland Lake Board of Education rate of grant from the province is the highest in the province at 87.8% in 1975.

Since 1971, ceilings have been placed on expenditures for education by the Ministry of Education. There have been two ceilings. One is the grants ceiling under which grants are payable in amounts up to and including the grant ceiling per pupil but on amounts beyond the grant ceiling up to the expenditure ceiling, no grants are paid and the full burden is borne by the local taxpayer. The other ceiling is the expenditure ceiling and no expenditure may be made beyond that ceiling. The Teachers pointed out that the Kirkland Lake Board has never had to go beyond the grant ceiling in meeting its commitments under the collective agreement.

I do not attach overwhelming significance to this argument. The essence of the argument is that because there is room within the maximum guidelines, although the full brunt of the expenditure would be borne by the local taxpayer, the Board should spend up to the maximum. There is no obligation to spend up to the maximum and it could be considered improper stewardship to use the expenditure ceiling as the basis for expenditure.

The teachers also attached significance to the fact that no additional tax burden has been placed on local taxpayers since the percentage equalizing formula came into effect. In fact, comparing the mill rate levy for secondary school purposes from 1975 with the levy in 1969 it fell by 19.6 percent at a time when inflation increased by 42 percent and the level for municpal services increased by 28.7 percent.

Although there was some disagreement between the parties about the appropriate percentages, I accept this table *[table omitted]* as generally indicative of the increased local tax burden disregarding the impact of the strike. The final conclusion - that the mill rate would represent an average increase of $40 to taxpayers in 1976 for secondary school purposes alone - must be considered in the light of an average tax bill in the community of apparently less than $400.

Examining the ability to pay argument, I conclude that the Board offer would place a significant additional tax burden on local taxpayers once implemented and rather compelling circumstances would be necessary to suggest a significantly greater tax burden.

p) Conclusion of Various Factors Within the Criteria

I have considered in some detail the factors in the parties evidence and argument and the criteria which I consider to be most relevant. Taking my conclusions from each of these discussions as a cumulative whole I am satisfied that the Board offer of March 2, 1976 for salary increases for 1975-76 and 1976-77 is a reasonable one.

Leeds and Grenville Secondary, 1975-76 - ELLIS - pp. 24-33

It is a fair conclusion from the submission that the major obstacle to the successful negotiation of a new agreement by the parties themselves, was the School Board's determination not to pay the secondary school teachers any more than it had recently agreed to pay the top four categories of its elementary school teachers, and the Teachers' determination not to have their settlement limited by what the elementary school teachers had been prepared to accept.

Both the School Board and the Teachers have substantial reasons for maintaining their respective positions and the arbitration board has found this issue a difficult one with which to deal.

The facts, which are largely non-contentious, are as follows: Since 1971, the elementary school teachers in categories 4 to 7 have effectively been paid the same as the secondary school teachers in categories 1 to 4. To date, this relationship has always been achieved by the School Board agreeing in negotiations with the elementary school teachers to raise their salaries to the previously established secondary school teachers' level or to set their salary levels with reference to the secondary school teachers' agreement. There was one period from January 1, 1974 to August 31, 1974 where as a result of the secondary agreement being changed from a school year agreement to a calendar year agreement (it is now, as mentioned, in the process of being changed back) the agreements did not overlap and the elementary school teachers' schedule did not keep pace with the levels in the secondary school schedule. This situation was roughly rectified, however, by a retroactive lump sum payment for the purpose agreed to at the time the elementary school teachers' 1974-75 agreement was settled.

The 1974-75 elementary school teachers' agreement for the first time introduced two salary schedules for elementary school teachers. The first one covered the period September 1, 1974 to December 31, 1974 (the end of the then current secondary school agreement) and for categories 4 to 7 it was identical to the secondary school teachers' schedule. The second schedule covered the balance of the school year and, while it specified certain increased figures for categories 1 to 3, with respect to categories 4 to 7 it said simply that these figures would be the same as those found in the secondary school teachers' schedule (a schedule that had yet to be negotiated).

The secondary school teachers' agreement for January 1, 1975 to December 31, 1975, resulted in very substantial increases in the secondary school schedules and, of course, because of the above provision, the elementary teachers in categories 4 to 7 participated fully in this substantial increase for the period of January 1, 1975 to August 31, 1975. The elementary teachers in categories 1 to 3, however, did not participate in this substantial increase with the result that the historical relationship between elementary school teachers in categories 1 to 3 and elementary school teachers in categories 4 to 7 was seriously distorted.

When it came to negotiate the elementary school teachers' agreement for 1975-76, it is apparent that one of the prime objectives of both parties to the elementary school teachers' negotiations was the restoration of the relationship between categories 1 to 3 and categories 4 to 7. This was achieved by an agreement that raised the 1 to 3 categories to the point where the relationship was re-established and paid the teachers in those categories a lump sum to compensate them for the deficiency they suffered in the January to August 1975 period. These levels were then maintained for all, for the period September 1, 1975 to December 31, 1975 (the period during which the existing secondary school schedule remained valid) at which point a 12% increase was agreed to for all elementary school categories. However, as part of this agreement, the School Board undertook to the elementary school teachers that if the salary schedule for secondary school teachers (the schedule which is the subject of this arbitration) was settled at the higher level, the elementary school teachers in categories 4 to 7 would receive corresponding increases.

The elementary school teachers' settlement was reviewed by the A.I.B. and the January 1, 1976 to August 31, 1976 portion of it rolled-back by 3% in categories 1 to 3 (subject to no change being required in the agreed maximums in categories 1 and 2) and by 4% in categories 4 to 7. The elementary school teachers, we are told, are actually receiving the agreed amounts notwithstanding the A.I.B. roll-back, but the portion of the settlement not approved by the A.I.B. is being paid with reference to past service and current salary levels have been reduced to the A.I.B. -approved levels. It is these levels in categories 4 to 7 which the School Board seeks to have this board award for the secondary school teachers.

The School Board's position is this. It has responsibility for the entire system. Because the qualifications are virtually the same as between the top four categories of elementary school teachers and the secondary school teachers, salary differentials between the two groups cannot be justified. A schedule for the period in question for the elementary school teachers exists in a form approved by the A.I.B. At least since 1971 the two groups have in fact been paid the same. To agree to a higher schedule for the secondary school teachers at this stage would obligate it, assuming the A.I.B. approved the higher schedule, to give corresponding increases to the elementary school teachers in categories 4 to 7 which the A.I.B. probably would not approve. It would as a practical matter mean more cost to the Board in elementary school teachers' salaries now or later and create a morale problem as categories 4 to 7 either fell behind the secondary school teachers or outstripped their colleagues in categories 1 to 3.

The School Board is asking this arbitration board, as we understand it, to conclude on the basis of the above considerations that it is right and proper to fix the secondary school teachers' salary levels at the senior elementary school teachers' levels as established during the School Board's negotiation with the Elementary School Teachers. The School Board also argues, of course, that an award of salaries equal to the present elementary school schedule is appropriate because that is all that one can expect the A.I.B. to approve. It also points to the elementary school teachers' settlement as the most persuasive of the comparative salary data available.

The secondary school teachers, on the other hand, do not agree that there is no justification for a differential in salary level. They point out that while the additional qualifications required for an elementary school teacher to be legally entitled to teach secondary school classes is virtually nominal (a six week course), the qualifications required by the OSSTF for recognized standing in the advanced secondary school teachers' categories for pay purposes are higher or different than what elementary school teachers require for corresponding standing in their categories. For example, a category 7 elementary school teacher would have no difficulty in obtaining the legal right to teach secondary school classes, but would be likely, the Teachers say, if he or she were to do so, to be paid at the secondary school teachers' Category One level. The Teachers concede that there are elementary school teachers who in addition to being legally qualified to teach

secondary school classes would also have all the qualification required by the OSSTF for equivalent standing in the secondary school categories - to move, say, from Category 7 to Category 4 - but say that the number of such individuals would be in the minority. The School Board says that a majority of teachers in the elemntary Categories 4 to 7 would qualify for equivalent standing.

The Teachers also say that what is relevant about the relationship between the salary schedules for the two groups in recent history is not the fact that they have been the same but the method by which that result has been achieved. The essential *historical relationship*, the Teachers say, is that, to date, the salary schedules have always been established by negotiations between the School Board and the secondary school teachers. The Teachers see the School Board's effort to establish the salary levels this time through its negotiations with the elementary school teachers as destructive of their right to independent representation and negotiation and furthermore as an attempt by the Board to exchange a strong antagonist for a weaker one - the secondary school teachers' organization being historically more effective in bargaining than the elementary school teachers, at least with respect to categories 4 to 7.

The Teachers, of course, also say that this board should not be governed by what the A.I.B. is likely to do, and that we should reject the School Board's argument that the award should be the same as the senior elementary school teachers' settlement because that is the most the A.I.B. will permit in any event.

Finally, the Teachers argue that the senior elementary school teachers' settlement cannot be regarded as a persuasive piece of comparative data because it is a settlement distorted by the extraneous concern of both parties to the negotiation to re-establish the relationship between the senior elementary school teachers and the junior elementary school teachers and by the School Board's undertaking to the senior elementary school teachers that they would benefit from any further improvement the secondary school teachers might subsequently win.

If the proposition that a difference in salary levels between these two groups of teachers cannot be justified is accepted, then it is apparent to this board that the School Board is in a very difficult position under the present circumstances because of being continuously "whipsawed" by what is in effect two separate negotiations each year for what practically speaking, assuming the premise is accepted, has to be the same salary schedule. Unfortunately, the arbitration board finds itself unable to be of any assistance with that problem.

In the first place, the board is satisfied that its resolve to approach the determination of its award from a negotiator's perspective, precludes it from deciding whether or not senior elementary school teachers are entitled to the same salaries as secondary school teachers. It would also, in its view, have been contrary to the intent of the Legislature as set out in the Negotiations Act for it to decide, on the merits of the case for not making salary distinctions between the two groups, that the secondary school teachers must accept the elementary school teachers' settlement.

The Negotiations Act deals expressly with the problem of overlapping negotiations between elementary school teachers and secondary school teachers and provides a specific solution. By agreement of the School Board and of the Branch Affiliate of the Ontario Public School Men Teachers' Federation and The Federation of Women Teachers' Association of Ontario - the bargaining agents of the elementary school teachers- and of the O.S.S.T.F. District #37 - the bargaining agent for the secondary school teachers - joint negotiations can be held (see section 4 of the Negotiations Act). If this board were to decide that the secondary school teachers' salary schedule for January 1, 1976 to August 31, 1976 was effectively determined by the elementary teachers' settlement because no difference could be justified, the result would be to grant to the School Board the benefit of a joint negotiation without the agreement of the secondary school teachers and without their having participated in the negotiation. There is no doubt in this board's view that it is implicit in the Negotiations Act that school boards are obligated to bargain separately with each of the "affiliates" specified in the Act until such time as the parties agree to a joint approach. It would be inconsistant with that obligation for this board to recognize a right in the School Board to have the elementary school settlement imposed on the secondary school teacher on the basis of a finding that there is no justification for any salary difference.

At the same time, it is equally clear that there is nothing to prevent the School Board from pursuing as a bargaining objective in separate negotiations the equalization of the two salary schedules, and from a negotiating perspective this board recognizes that it must give considerable weight to the importance that the School Board must obviously and quite properly attach to that objective.

On balance, however, this board does not believe it would have been realistic for the School Board to expect to achieve acceptance of the elementary school schedules by negotiation short at least of insisting on the point through a prolonged strike, and, accordingly, is of the view that a reasonable, negotiated settlement would not have achieved that objective. This award will reflect that view.

The arbitration board has already indicated that it will not attempt any precise analysis of what the A.I.B. is likely to do nor be concerned with the Anti-Inflation guidelines except generally as one of the factors likely to influence negotiations. The Board is not, therefore, prepared to confine its award on the first salary schedule to the elementary school teachers' settlement on the basis of what one might anticipate the A.I.B. will approve.

The Board will view the elementary school teachers' settlement as an item of comparative salary data to be considered along with other such data with which it has been provided.

VI SPECIAL COMMENT ON CERTAIN OF THE INFORMATION AND DATA PRESENTED

The information and data which the parties provided and which the board has considered in reaching its decision requires specific comment in two or three particular respects.

In the first place, the board has given very considerable weight to the information provided as to the salaries and benefits being paid to secondary school teachers in adjoining counties. In doing so, however, it has thought it proper not be be unduly influenced by the situation in Ottawa and Carleton. The secondary school teachers in Ottawa and Carleton are presently enjoying the marked avantage of having finalized their current agreement just prior to the effective date of anti-inflation guidelines. That circumstance puts those School Boards in a special category and in the Board's view it would not be realistic for the secondary school teachers in Leeds-Grenville to asses their own settlement by comparison to Ottawa-Carleton. Their own settlement must be judged in the light of the fundamental change in the economic climate and in what can be reasonably expected in terms of salary increases introduced by the anti-inflation legislation. Negotiating pressures will over the years ultimately bring Ottawa-Carleton back into line with the rest of the province and in the meantime teachers in other counties will have to be satisfied with asking their colleagues in Ottawa-Carleton to bring the wine when they come to dinner.

We would also note the obvious difficulty in comparing other settlements that is introduced by the existance or non-existance of COLA clauses and variety of such clauses and by the uncertainty of the ultimate result where the settlements in question are under review by the A.I.B.

The second item of information which the board felt to be of particular significance what was the Teachers referred to as the "tentative agreement" of March 3rd. This is the proposal the admissability of which was the subject of an interim decision by this board during the course of the hearings. The basis of its being admitted has been dealt with at length above.

The important features of this proposal are as follows:

(a) It deals only with the salary schedules and leaves all of the other items in dispute unresolved.

(b) It establishes the salary schedule on the basis of folding in the cost of living, compressing the schedule to eleven years in each category and increasing the figures by 8.5% effective January 1, 1976 and by 11% effective September 1, 1976.

(c) The School Board rejected it.

(d) The Teachers' negotiating committee accepted the proposal.

Sault Ste. Marie Secondary, 1975-76 - KENNEDY - pp. 24-29

MONETARY ITEMS

Criteria

The submissions of the parties are quite detailed in drawing my attention to the various authorities and sources to which I may look for guidance in determining the appropriate level of compensation for Teachers in Sault Ste. Marie. Reference has been made to the specific provisions of Bill 100; to decisions rendered in previous arbitrations, with particular reference to the decision of The Honourable Mr. Justice Dubin in Metropolitan Toronto and Dean D. L. Johnston in Kirkland Lake; and to the general trends and conditions within the economy, both in and outside of the teaching area. Suffice it to say that there is no significant area of disagreement between the parties as to what the criteria are and, if it is deemed necessary that I enumerate these criteria, I would adopt the wording with respect to them of The Honourable Mr. Justice Dubin. These criteria do, however, conflict in effect when applied to a specific fact situation and, as a result, an appropriate level of compensation cannot be settled as a question of mathematical certainty. The various criteria merely result in a range of reasonableness and the conclusion of the arbitrator must fall somewhere within that range, depending upon which aspects he considers are to be emphasized and which are of lesser significance. The Briefs submitted by the parties set clearly the variance in emphasis between them. The Board's Brief is fundamentally and properly concerned with the significant effect on the community of increased salary expenditures at a time when Provincial contributions to education are restricted and considers that its proposed increases are, in fact, very substantial and constitute fair compensation to the Teachers when compared with other jurisdictions, there being no reason in the Board's view to become a salary leader. The focus of the Teacher argument recognizes the established high quality of education in Sault Ste. Marie and that an application of the above-referenced criteria justifies payment to the Teachers at the higher end of that area of reasonableness. Stress is placed on salary levels in jurisdictions suggested to be comparable and the argument is made that there exists no reason why Teachers in Sault Ste. Marie ought to be paid any less for rendering comparable services of a high calibre.

Neither party placed any great reliance on arguments of historic relationships, apart from the Teacher reference to the traditional position of Sault Ste. Marie as an upper income area. At my request, the parties did direct some consideration to this aspect and I concur that this cannot be a significant consideration. Negotiations between the parties have never, in fact, proceeded on that basis, although there was at one time a somewhat tenuous relationship with salaries paid in Toronto. It is a statistical truism that co-relation does not prove cause and effect and accordingly, the mere fact that some mathematical relationship may exist between salaries paid in Sault Ste. Marie and those paid

in other jurisdictions over past years does not, of itself, create a historic relationship. There must be, in addition, evidence justifying the conclusion that the relationship between those salaries is other than accidental. Accordingly, I have not placed any reliance on historic relationships.

The evidence contained in the Briefs submitted by the parties and presented on the Hearing persuades me that the relative positions of the parties represent in each case, in so far as the monetary items are concerned, an excessive emphasis on the criteria favourable to each party's position and that a mid-ground must, in fact, be found. To accept the position of one party or the other would, in my view, ignore factors relevant to the proper determination of a fair and just level of compensation in all the circumstances. The Brief and Reply of each of the parties are very detailed and complete in the presentation of the aspects of the criteria laid down by Mr. Justice Dubin which would be favourable to the position being asserted by the party. The cost factors, as outlined by the Board in my view are not of overwhelming significance since the same cost factors will be present in other jurisdictions and the problems being experienced by the Board in Sault Ste. Marie are in no way unique in the Province of Ontario at the present time. I consider more relevevant the analysis submitted by the Board of the salary levels in force in other jurisdictions of comparable size and, based on that analysis, the Board's proposal does fall reasonably into line. However, as pointed out by the Teachers that analysis may have overlooked cost of living allowance increases actually being paid in those Board and other geographic, political and economic differences and that analysis is simply one of many guides to be followed. In considering the specific settlements in other locations, I feel the Nipissing settlement does reflect an unnecessarily high level of remuneration and the evidence discolses that because of the grant structure, educational expenditures do not have as direct an effect on the taxpayer in Nipissing as in Sault Ste. Marie. With reference to the Kirkland Lake settlement, the evidence indicates that there are differences in the nature of the two municipalities and the educational system which would justify higher salary levels in Kirkland Lake than in Sault Ste. Marie. Metropolitan Toronto is a useful guide to the extent that it indicates the salary level in force within the largest jurisdiction of the Province. Again, there are many similarities between Sault Ste. Marie and the prevailing conditions in either Sudbury or Thunder Bay.

The general trends in teacher remuneration over past years within the Province of Ontario are reviewed in detail in each of the awards of Mr. Justice Dubin and Dean Johnston, both of which awards are well known to the parties and I do not consider it necessary to reiterate those findings. Suffice it to say that this has been an area of rapid change and very real increases have been achieved in teacher salaries in most jurisdictions. Sault Ste. Marie has traditionally been one of the higher paying areas and was especially so after the final offer selection process for the 1974/75 school year. The real value of salary has, of course, been eroded by inflation but, taking all factors into

consideration, the "catch up" argument does not apply in this arbitration. Similarly, and based on the material contained in the parties' Briefs it would appear that Teacher salaries compare quite favourably with remuneration paid elsewhere for comparable services both in the public and private sector.

It is my view that the determination of salary level must, in first priority, be related to salary levels in force in other jurisdictions which are related geographically to the jurisdiction in question or which exhibit comparable political, economic and social characteristics. This type of guide is particularly appropriate to the present arbitration in view of the extensive statistical material that is available from other settlements. My Award for the first year of the Agreement relies primarily on a consideration of salary levels in force in what I view to be comparable jurisdictions. I recognize the significant cost impact of the salary award, but it must be remembered that in the comparable jurisdictions the salary levels will have the same impact and this is, essentially, a Province-wide problem. With reference to the second year of the contract the parties are basically in agreement that protection from inflation is the prime consideration. The Briefs and presentations to me at the hearing referred to various projections as to the level of inflation rate to be anticipated. My Award with respect to the second year of the Agreement provides for a grid increase of approximately 8%. I consider that percentage to be appropriate in the light of current economic conditions and policies and it is consistent with the available evidence as to salary levels in other juristictions for the 1976/77 school year.

The foregoing, then, outlines the approach I have taken in making the following Award.

Windsor Secondary, 1975-76 - FERGUSON - pp. 21-24

In assessing the statistical evidence on grid salaries, I must conclude that the proposal of the Board which does not equalize salaries of the secondary and elementary school teachers still provides one of the best salary grids in all categories for the period up to August 31, 1976. When comparing the grids for Boards which have a staff strength of 500 or more, under this proposal the secondary school teachers in Windsor will have the highest starting salary in all four categories. The salary grids of only two other Boards provide for maximum salary at the nine year level in category 1. Windsor Board is the only grid providing maximum salary at the nine year level in category 3 and 4, and in most cases where another grid provides a higher maximum salary there is a greater number of years to reach the maximum.

The proposal of the Board for the period from September 1, 1976, to August 31, 1977, which would incorporate an increase of 5% would also produce one of the best salary grids in all categories when comparing grid salaries for other Ontario Boards having a teaching strength of 500 or more.

When dealing with the question of grid salaries the Federation only emphasizes the comparison of salaries paid to secondary and elementary school teachers in Windsor. The evidence does not support the Federation when one attempts to compare the salaries paid to secondary school teachers in Windsor and salaries paid by other Boards having a substantial teaching staff. The elementary teachers' contract for 1975 produced a grid which was identical to the secondary teachers until January 2, 1976. On this date the elementary teachers, salaries were increased by 4% and these teachers were also protected by the monthly COLA allowance and by the fold-in of COLA at the expiration of their agreement. I must emphasize that with respect to grid salaries, the Federation has not provided me with any comparison with other Boards of Education.

In view of the fact that I have upheld the retention of the monthly COLA allowance as well as the fold-in of this allowance on two occasions during the term of the collective agreement, it is my award that the salaries of the secondary school teachers should be adjusted so as to equal the salaries paid to the elementary school teachers on January 2, 1976. I believe, based on the evidence, that this results in an over-all adjustment of 4% above the proposal of the Board, but only for the purpose of January 1, 1976. The salaries for categories 1 to 4 would then equalize the salaries for 4 to 7 in the elementary teachers' grid. It is my award that there will be no further adjustment in salaries during the term of the collective agreement except those adjustments which are required under the COLA fold-in provisions which I have awarded. The end result is that the secondary school teachers and elementary teachers' salaries will be equal until January 1, 1977. On that date there will be a fold-in of COLA but the secondary teachers will benefit from a further fold-in at the expiration of their new agreement.

The salary adjustment which I have provided may appear to be minimum. However, it must be borne in mind that continuation of the monthly COLA allowance and retention of the COLA fold-in formula throughout the term of the new agreement are matters which are extremely beneficial to the teachers. The Federation cannot expect to have it "both ways". The Windsor teachers' salary grids are not below average and through continuation of all COLA allowances, COLA wage or readjustments, the teachers will continue to have full protection against inflation. In my opinion that constitutes a fair and proper conclusion based on the evidence presented to me.

Niagara South Secondary, 1976-77 - KENNEDY - pp. 1-4

The relevant considerations in determining appropriate salary levels for school teachers were enumerated by the Honourable Mr. Justice Dubin in his Arbitration Award relating to the Metropolitan Toronto Secondary Schools and his comments are referred

to by each of the parties to this dispute in the materials which have been filed with the Arbitration Board. There is difficulty in the application of those considerations and guidelines in that in any given fact situation, they are not likely all to point in the same direction. The argument of the Teachers with respect to salary levels focuses primarily on comparisons with teaching salaries in other geographic areas, with salaries of other groups both in the public and private sectors, and with general trends in the cost of living. These comparisons are given with extensive statistical support and cover not only the current year but several past years. In summary, these comparisons established to the satisfaction of this Arbitration Board that teaching salaries in Niagara South have not kept pace with improvements achieved elsewhere and that the relative position has deteriorated over the past few years in relation both to Provincial and Regional trends.

The arguments of the Board in this area contend that on a comparison basis, the salary proposals of the Board continue to be reasonably in line, and go on to stress the serious and significant cost problems being experienced by the Board as a result of continuouly increasing costs and restraints on the level of Provincial assistance in meeting these costs. The Board argument stresses that the teaching environment in Niagara South in such areas as class size, preparation time, and fringe benefits makes Niagara South a desirable place to teach and that appropriate salary levels must be considered in that context. The Board brief and reply each stress the "ability to pay" argument and statistics are given which satisfy this Arbitration Board that because of general economic conditions and the general structure of its assessment base, increased education expenditures beyond Provincial grant ceilings do have a significant impact on the taxpayers. It is quite true that the Provincial pattern of financial assistance to education does recognize a weak assessment base by providing for a higher grant rate. However, where a Board is spending in excess of its grant ceilings, this consideration becomes inapplicable and expenditures beyond grant ceiling have a more serious impact on the absolute level of taxation in areas such as Niagara South that have a low assessment base. On a per pupil basis, the Niagara South Board is spending at an equivalent or better rate than surrounding Boards.

It is not the roll of an Arbitration Board to select a compromise solution to the positions being offered by the parties in an effort to make everyone happy. However, it may well be that a proper consideration of the various and conflicting considerations which go into the determination of the salary level will result in a conclusion that a mid-ground is indeed appropriate. It is the view of this Arbitration Board that the Board of Education's offer gives inadequate recognition to the real trends in negotiated teacher settlements in other geographic areas. It is also, however, the view of the Arbitration Board that the Teachers may have undervalued other aspects of the teaching environment in Niagara South and that they have not been sufficiently conscious of the economic conditions within the community in which they live and work.

In the current economic climate, this Arbitration Board has no alternative but to consider the effect and applicability of the Federal Government's Anti Inflation Legislation in relation to this Arbitrated Settlement. The Anti Inflation Guidelines constitute a separate and distinct level of review of the entire compensation package with will result from this Arbitration Award. As members of the Board of Arbitration, we have neither the facilities nor the jurisdiction actually to apply the guidelines. However, it would be irresponsible to ignore the general levels of increase which are permitted and the basic Government economic goals and policies which are reflected in the Anti Inflation Legislation.

Peel Secondary, 1976-77 - BECK - pp. 12-15

COMPENSATION

As Mr. Justice Dubin noted in the Metro Toronto award, it is neither a pleasant nor an easy task to rule on wage increases and, in effect, put a price on other peoples' services. However, Mr. Justice Dubin indicated that there are yardsticks which he deemed relevant and listed a number of factors which ought to be taken into consideration. As I also intend to take into consideration these factors, I will list them.

1. The overall compensation presently received by the employees involved in the arbitration proceedings, including direct wage compensation, vacations, holidays and other excused time, insurance, pension, medical and hospitalization benefits, continuity and stability of employment, and all other benefits received;

2. A comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees generally, (1) in public employment in the community, and (2) in private employment in the community;

3. A comparison of the wages, hours and conditions of employment for the employees involved in the arbitration proceedings with the wages, hours and conditions of employment with other employees performing similar services within the same municipality and in comparable municipalities;

4. The average consumer price for goods and services commonly known as the cost of living;

5. Changes in any of the foregoing factors during the relevant period of time.

6. The economic climate of the day, including consideration of the gross national product and of the gross provincial product;

7. The interest and welfare of the public, and the financial ability of those who are called upon to pay the cost of the services being rendered.

In arriving at an award, all these factors must be taken into consideration and not merely one.

Taking into account, as best I can on the evidence before me, the factors indicated by Mr. Justice Dubin, I conclude that the increase on the grid, exclusive of increment and allowances offered by the Board of 9.2% in 1976-77 and of 7.73% for 1977-78 is fair and equitable. With respect to the grid system, it should be pointed out that teachers' salaries are determined by the position on a salary grid. The number of years of teaching experience and the qualifications of the teacher determine the position on the grid. Within the grid, four categories are used to describe the various types of qualifications certificates, while salary levels at different steps within a particular category are used to recognize successful teaching experience up to a certain maximum number of years. With respect to the treatment of other groups of employees within the Board's jurisdiction, increases in total compensation for 1976-77 were as follows:

Elementary Teachers	7.68%
CUPE	8.30%
Custodian/Maintenance	8.32%
Administrative	7.46%
Executive	6.05%

In terms of comparison with other Boards of Education, the offer of the Board for 1976-77 would place the Peel teachers third out of the ten boards in the so called Golden Horseshoe region which stretches from Oshawa to Welland. Peel would be exceeded only by the Metropolitan Toronto Boards and the Lincoln Board of Education. The Peel offer would place the teachers no more than $150 per year per teacher (on average) behind the highest board in comparison. When comparisons are made between individual positions on Peel's proposed grid and those of the other Boards, the comparisons are excellent. There is no question that the Peel salary grid is competitive.

With respect to the cost of living, the salaries of teachers in Peel have been more than keeping pace with the cost of living. Based on 1971 prices equalling 100, the cost of living in Toronto stood in September, 1976 at 147.5. Using the same base, the Board's offer for the school year beginning September, 1976 would place the salary index at 167.97, over 20 points higher. One of the reasons for this salary index is unquestionably the substantial increase given the teachers in the existing 1975-76 contract during which the salary of the average teacher went up $4,102 or 25.88%. The actual bargained for increase in 1975-76 was 22 percent

after a roll-back by the Anti-Inflation Board. In all of the circumstances, the Board's offer of 9.2% on the grid for 1976-77 seems fair and equitable.

In terms of 1977-78, the matter is more at large as there are very few awards for this period to compare with. On the other hand, the large increase in 1975-76, and the substantial increase awarded in 1976-77, must be taken into consideration along with the fact that inflation is demonstrably on the ebb in Canada and the projections for the increase in cost of living for the coming year range between 6 and 7%. As indicated above, the teachers' increases have moved rapidly ahead of the cost of living over the past few years and the 1976-77 settlement that I have awarded is more generous than that obtained by other groups under the Board's jurisdiction. No one group in the community that is supported by tax dollars can be seen to move too far out of step by being too far in front of other publicly funded groups. And this is particularly so in a time of restraint when all sectors of the economy, both public and private, are under pressure to curtail their demands. This is not for a moment to say that the teachers are not entitled to a reasonable settlement that recognizes their legitimate needs and the important place they occupy in society. Nor should the teachers be asked or expected to exercise a restraint that is not being exercised by others. In all of the circumstances, the increase on the grid of 7.73% for 1977-1978 seems fair and equitable and it is so awarded.

Durham Region R.C.S.S. , 1976-77 - KENNEDY - pp. 4-6

The Board Brief and argument also mentioned the particular economic problems of a Separate School Board and we were advised that any salary increase over and above eight percent would have full impact on Separate School taxpayers in Durham as it would be at that point that Board spending would exceed grant ceilings and there would be no provincial contribution towards the additional costs. The statistics provided by the Board would indicate that Durham Region has a relatively unfavourable Separate School assessment base, and while the provincial grant structure is designed to compensate for such a difference, it of course does not have any affect when the Board spends in excess of its grant ceilings. We were advised that in Durham Region, the public school system had four times the number of pupils but ten times the assessment base to support any expenditures in excess of grant ceilings. Because of the practical necessity to keep the Separate School mill rate reasonably in line with the public school mill rate, the Separate School system was at an economic disadvantage in comparison to the Public School System, and as a result parity in absolute salary levels is unrealistic.

The thrust of the Teacher argument on the appropriate level of increase stresses comparability with Metropolitan Toronto, and parity with the Durham Public School grid. The Teachers argue that even the twelve percent increase which is sought falls short of the achievement of parity with any of the three Boards previously mentioned.

The Teacher Brief and argument also attempted to establish an historic relationship with other Boards of Education and specifically, with the Durham Board of Education, The Metro Toronto Separate School Board, and The Metro Toronto Board of Education. The statistics and evidence quoted in support of that argument were not sufficient to establish any such historic relationship for the following reasons:

(a) The period of time over which the comparisons were made covered essentially only two previous contracts and this is unsufficient period to develop the historic relationship.

(b) The comparisons used Calendar Year Contracts for the Durham Roman Catholic Separate School Board in comparison with School Year Contracts for the other Boards which, in a period of inflation, if all other factors are equal, is bound to show the Calander Year Contracts as being ahead of the previously settled School Year Contract.

(c) To establish the historic relationship, it is desirable to show that, in addition to the establishment of a mathematical co-relation between salary levels, the co-relation existed for other than accidental reasons.

The determination of a salary level is not a matter that lends itself to any form of mathematical or formula computation. The application of any of the criteria or standards suggested in the numerous Arbitration Awards on this sort of issue can at best create an area of reasonableness within which the salary level will lie. Both parties to this dispute have come within that area of reasonableness. The economic problems and circumstances of the Board are very real, and this is a background consideration which over the long run, the parties cannot ignore. However, it is neither appropriate or reasonable to ask in the context of an Arbitration that the problem be solved by the simple expedient of maintaining salaries at the level which will solve it.

In the result, the most important single area of consideration in determining an appropriate salary level would appear to fall to an evaluation of comparable salaries being paid elsewhere. In addition to examples of other Teachers' salaries, evidence was provided of some salary levels and improvements granted in the private Sector. The comparables of Durham Public and Metropolitan Toronto would appear to support the Teacher position; whereas an analysis of comparables when looking to the north and east would appear to support the Board position. The parties are in agreement that the Anti Inflation Board guideline for the contract in question is ten percent. The guidelines must constitute a significant portion of the economic climate of the day and represent the stated policy of the senior level of Government in this country. Accordingly, in all of the circumstances and considering the arguments which were made to the Board of Arbitration on the Hearing, it is concluded that the appropriate level of increase to be awarded would be an increase of ten percent over the salary

grid attached as Schedule "A". Since the parties have agreed to the approach of an across-the-board percentage increase with no restructuring of the grid, that is the appropriate method of applying the ten percent to the salary grid.

Lambton Elementary, 1977-78 - KENNEDY - pp. 7-9

When considering the second year contract, however, a further persuasive circumstance is found. The function of an interest arbitration is to the extent possible to reach the proper conclusion that the parties ought to have reached through free collective bargaining. We have been advised by these parties that the Lambton Board of Education has settled a contract with its secondary teachers for the year ending August 31st, 1979 and the provisions of that settlement were provided to us in the materials submitted by the parties. It is recognized that of the four secondary teacher salary categories, the top four degreed categories of the elementary system relate to teachers of comparable experience and training and they are generally recognized as being equivalent categories in the two systems. We would further make reference to the following extract from the minutes of negotiating meetings which led to the elementary collective agreement for the 1975-76 school year:

> It is the intent of the Lambton County Board of Education that Elementary and Secondary Teachers with equal qualifications should receive equal remuneration. The Board, therefore, agrees to review the Elementary Agreement at the time a 1975-76 is reached between the Board and the Secondary School Teachers without arbitration or final offer selection or strike, if the Secondary Agreement places the Secondary School Teachers in a preferred monetary position relative to the 1975-76 settlement with the Board's Elementary Teachers.

We were also provided with a letter from the Anti-Inflation Board dated March 12th, 1976 directed to the Lambton County Board of Education wherein the following statement is contained:

> The Board recognizes an "historical relationship" between compensation paid Lambton County Elementary Teachers and that paid Lambton County Secondary Teachers. Nonetheless, in implementing a program of restraint, the Board has concluded that such relationships may have to be modified in the short term.

In these circumstances, we have concluded that the most appropriate comparable to which we should give consideration is, in fact, the settlement that was reached through the normal processes of collective bargaining between this Board of Education and a group

of comparably qualified Teachers teaching in the identical geographic region. In the course of his argument, counsel for the Board recognized the high degree of relevance that the secondary settlement should bear on this arbitration, but suggested that the relationship of parity ought not to be restored in one single contract year, but that it should be restored over a period of time. In support of this reasoning, he made reference to the 1975 settlement which, because it came prior to the imposition of wage and price controls, was not subject to A.I.B. roll-back. As a result, the elementary teachers assumed a relatively more favourable position in that contract year over their secondary conterparts who settled after the controls came in and received a significant roll-back. It was argued, essentially, that the elementary teachers, having had their money up front, ought to be restored to parity over more than one contract year. We believe that that argument overlooks the realities of what the A.I.B. controls in fact did to that elementary/secondary relationship. Because the elementary teachers had a favourable 1975 settlement, the experience factor gave them a significantly lower A.I.B. guideline for the subsequent years and as a result, the secondary increases were larger during control period settlements thereby off-setting the earlier advantage of the elementary. We are therefore not persuaded that the elementary teachers have, in fact, enjoyed any advantage over the control period as a whole and, in any event, in determining current salary levels, we consider it much more appropriate to focus on the situation as it now exists rather than to become involved in an analysis of what one or other of the parties perceives to have been an inequity in the past. Accrodingly, we view the Lambton secondary settlement as a persuasive indicator of the appropriate salary structure of the elementary second year agreement, particularly in view of the fact that the resultant salary levels are consistent with and seem to maintain historical positions within the statistical comparisons filed by the parties.

In addition, we were made aware of the provisions of a settlement entered into for the 1978-79 school year between the Lambton Separate School Board and its Teachers, which settlement, again, will be representative of salaries being paid to teachers of comparable experience and qualification in the same geographic region. That settlement, of course, covers all seven categories with which we are concerned on this arbitration.

Huron Secondary, 1977-78 - JOHNSTON - pp. 12-24

3. Analysis

(a) Comparison

In comparing the two proposals the first point of contrast is that the range - a 7% spread - is fairly substantial. The Board proposal, excluding increment, provides an average increase of slightly in excess of 4%. The Teacher proposal, excluding increment, provides an average increase of between 10 and 11%. The second point of contrast is that the Board proposal is tilted

in favour of the more junior teachers providing them with larger percentage increases than the more senior teachers. The Teachers' proposal by applying the same percentages to all has no tilt.

(b) Recent Trends

As I indicated earlier I attach considerable significance to this point of comparison. The significance is underlined by the fact that some of the other factors discussed below tend to cancel one another out.

The Teachers indicated that six other School Boards had settled agreements for 1978-79 for secondary school teachers. They are Central Algoma, Cochrane-Iroquois Falls, Elgin, Essex, North Shore and Waterloo. The North Shore and Waterloo settlements provide for a fold in of the August 31, 1977 to August 31, 1978 cost of living increase. Based on a now established May to May increase of 9.0% which shows a recent rise in the yearly trend, the Teachers' estimate of a 7.5% August to August increase is a conservative and reasonable one. It is therefore reasonable to characterize the Waterloo and North Shore settlements as increases of 7.5%, excluding increment. The Teachers did not provide percentage figures for the other four settlements.

The Board provided information on the Elgin settlement which it costed at a percentage increase to the average teacher's salary of 9.3% including increment or approximately 7% excluding increment. It provided a news release indicating that the Central Algoma salary increase was 5% and with increments it would cost out at an 8% increase.

In addition the Board provided information on 1978-79 settlements for Metropolitan Toronto and Wentworth Elementary School Teachers and on a signed memorandum with the Oxford Secondary School Teachers. It costed them as follows:

(i) Metro Toronto 7.4% average teacher increase including increment. I presume this to be slightly in excess of 5% excluding increment.

(ii) Wentworth 8.6% average teacher increase including increment. I presume this to be slightly below 6.5% excluding increment.

(iii) Oxford 6.89% "total compensation package increase" which the Board assumed to be a 4% average increase excluding increment.

The Board provided a press release from Labour Canada as of May 10, 1978 indicating that 103 collective agreement settlements in the first quarter of 1978 showed average annual increases in base rates of 6.7% down from 7.1% for the fourth quarter of 1977. In the one year agreements the average annual increase was 6.6%. No indication was given as to what percentage of these agreements were free from A.I.B. jurisdiction.

The Board also provided news releases with the following data. They did not specify whether A.I.B. guidelines applied. It would seem that, at least for most, A.I.B. guidelines did apply.

(i) Southwestern Ontario Electrical Workers ratified a province wide settlement with a 5½% increase in the first year of a new contract, apparenly subject to the A.I.B., and with a 4½% increase in the secondary, free from the A.I.B.

(ii) Perth District Board of Health and CUPE - 1978 contract 5.9% average wage and benefit increase.

(iii) Metropolitan Toronto and CUPE inside and outside workers - 1978 contract 5.75% wage increase.

(iv) Toronto Star and Newspaper Guild - 1978 contract 6% increase.

(v) Twenty-nine hospitals and CUOE - 5% wage increase over twelve months.

(vi) Thirty-eight hospitals and OPSEU - 4% wage increase over 12 months.

(vii) Twenty teaching hospitals and Interns and Residents - 4% over 12 months.

The Board provided data on local public sector wage increase settlements for 1978, apparently subject in all or most cases to A.I.B. guidlines as follows:

(i) County of Huron: 3.49%, 4.65%, 3.94%, 5.30%

(ii) Goderich: 4%, 2.45%, 2.74%

(iii) Perth: 5.9%

(iv) Seaforth: 6.66%, 4%

(v) Wingham: 5%, 9.32% including change of category for the 2 persons involved.

(vi) Exeter: 3.7%, 4.16%, 4.78%

(vii) Bruce County: 5.27%, 5.91%, 5.58%

(viii) Perth County: 5.7%, 6.77%

(ix) Walkerton: 5.36%, 9% including change of category for the one person involved.

Finally, the Board provided a news release on the 1978-79 settlement between the University of Western Ontario and its Faculty of an average 6% salary increase, tilted in favour of more junior faculty, with an additional 1% employer contribution to pensions to be effective half way through the contract year.

In examining these recent trends I have given much more attention to those which are free of A.I.B. guidelines, to those which are more geographically proximate, and to those that are in substantially comparable employment situations. Though the data base is slim and fragile it would appear that a prevailing range of 5 to 7% is beginning to emerge with some lesser indication of a tilt in favour of lesser paid or more junior paid employees.

(c) Treatment of Increment

The Board's position was that increment should be viewed as a salary increase and reflected in the total compensatory package and overall cost to the Board in determining a fair salary award. The Board referred to the past bargaining experience of the parties. In the past a global sum for compensating increases was agreed upon between the bargaining parties. Then a Joint Working Committee subsequently determined how it should be allocated.

The Teacher's position was that increment was an earned reward for greater experience and enhanced qualifications based on that experience and should be considered quite separately from any salary increment. This debate has been frequently played out in the past with respect to the treatment of increment for A.I.B. reporting purposes.

On other occasions I have had the opportunity to consider the treatment of increment. My views then - as they are now - are that there is not a great deal of difference in the expressed positions of the parties. I agree with the Teachers that increment is not a "cost of living type" increase. It is a payment which reflects a more experienced, and in that sense better qualified, teacher who, therefore, performs a somewhat more valuable service for a Board. Whether something less or more than a ten year period is the appropriate time horizon over which that reward should be measured is not immediately important to the debate. What is important is that the art of teaching is not one that reaches its maximum potential quickly with a very few weeks of practice. It has a slower maturation process. It is appropriate for individuals who continue to be engaged in developing the art over a period of time to be rewarded for that effort.

I also agree with the Board that it is appropriate to cost the increment in determining what a reasonable increase for salaries and monetary benefits should be, particularly when credence is given - as I think it should be - to ability to pay factors. In costing the increment, however, it is also important to recognize that savings are often realized through a roll-over and related experience factor. With senior staff leaving and junior staff coming on and ten year staff reaching a maximum the impact of increments is not fully shown by simply aging present staff on the grid. The cost factor increment should reflect a roll-over experience as well.

(d) Increment and Average Salary Comparisons

The Board argued strenuously that it was inappropriate to compare the Huron County grid minima and maxima at each of the four categories with other Board grids because that did not truly

reflect the impact of another County's grid applied to the teachers presently employed in Huron County. I accept that point to some degree, bearing in mind that Huron County Board has a relatively high number of teachers at, or near the maximum in each category, a relatively high number of teachers in the highest category, and very few teachers in the early years of the grid in any category.

By contrast the Teachers submitted that average salary comparisons were inappropriate because there was no average teacher. The average figure ignored realities of exactly what amounts were paid to existing teachers in Huron County. I accept the validity of this point too. However, on both of these points the caution expressed by the parties is to be taken only thus far, namely that one must be conscious of distoring effects of external comparisons when applied to the Huron County group of teachers. Once the possible distoring effect is taken into account, then it is appropriate to look to grid minima and maxima figures and average salary figures from other Boards.

(e) Province-wide vs. Regional Comparisons With Other Secondary School Boards

The Board was critical of external comparisons drawn to teachers' salaries in other counties or districts throughout Ontario generally and to a lesser extent salaries identified from government supplied data in the whole range of counties in the geographical area of Western Ontario. The Board's position was that comparison should be made - primarily, if not exclusively - to the half dozen or so counties that touched or nearly touched Huron County and within those counties, the ones with a more closely parallel employment and tax assessment base. In ranging beyond those half dozen counties the Board limited its comparative reach to the dozen or so counties in Southwestern Ontario that were closely adjacent to Huron County.

I have given some credence to the Board's submission, although I believe province-wide data have some significance as well since professional skills of a teacher - setting aside preferences as to places to live - place him in a fairly mobile labour force.

(f) A Province-wide Grid Comparison

The Teachers introduced province-wide grid comparison for 1977-78 showing Huron County minimum category one salaries at the bottom two or three on the province-wide basis and maximum category four salaries among the bottom five or six of the province-wide group of 62.

The Teachers also submitted that Huron teachers experienced a market decrease in relative position from 1976-77 to 1977-78. The Teachers introduced evidence on minima and maxima. In 1976-77 Huron placed fourteenth from the bottom and by 1977-78 Huron had dropped to fifth from the bottom.

The Teacher's brief showed that Huron's minima and maxima salaries are on the bottom ten percent in a cross the province comparison. Comparing Huron only with those boards having grid categories requiring ten years to reach maximum, Huron salaries are $1294. below the Ontario average.

(g) Comparison with Neighbouring Counties

This factor is one to which I attach a reasonable degree of significance. The Elgin settlement of approximately 7% excluding increment and the Oxford signed memorandum of approximately 4% have already been referred to.

The Huron County grid distribution costed against salary grids of nine neighbouring counties (Bruce, Elgin, Grey, Kent, Lambton, Middlesex, Oxford, Perth, Wellington) showed Huron's average salary to be 9th out of 10 (1 being the lowest) in 1976-77, dropping to 5th out of 10 in 1977-78. This is a reasonably significant drop in one year, although the overall placing is by no means embarrassing.

In a 1977-78 twelve county total teacher compensation comparison embracing adjacent counties (Brant, Bruce, Dufferin, Elgin, Grey, Kent, London, Middlesex, Oxford, Perth, Wellington) supplied by the Board, Huron placed seventh from the bottom on the grid and eighth from the bottom for total compensation including responsibility allowances, extra degree and related experience payments and benefits. When Waterloo and Lambton counties were added to the comparison and Huron teachers were costed against the salary grids of the others Huron ranked fifth from the bottom on average salary. Returning to the twelve neighbouring county comparison and costing the 1977-78 Huron grid distribution excluding principals and vice principals Huron was seventh from the bottom.

The comparisons show that Huron is currently placed in the middle range, that it has dropped in position somewhat from 1976-77 to 1977-78, and that it compares less favourably first when principals and vice principlas compensation are excluded and secondly (though only to a minor extent) when related experience, responsibility allowances, extra degree payments and benefits are excluded, than where teachers salaries alone are considered.

(h) Comparison of Huron County Teacher Salaries and Changes in the Consumer Price Index

Both the Board and the Teachers produced different sets of statistics charting out teachers' salaries on the grid and average teachers' salaries as against changes in the consumer price index since 1971. Based on this evidence I am not satisfied that the Teachers have clearly established that their real purchasing power has dropped in that period warranting a "catch-up" for this reason alone.

(i) Comparison to Other Huron County Public Employees

The Teachers supplied wage comparisons to registered nurses, Ontario provincial police officers and Ministry of Transport and Communications engineers in Huron county, suggesting that the Teachers had suffered by contrast. I give some credence to this comparison, but I am conscious of the qualification placed on these figures by the fact that the engineers may have different supervisory responsibilities at the upper grades, that the comparisons do not reflect the extra payments for headships and assistant headships for teachers, that nurses salaries are determined to a greater extent by province-wide figures and that the nature of the provincial police responsibilities do not make them a closely applicable related occupation.

(j) Cost of Living - Huron County

The Board provided evidence purporting to show that the costs of living, rent, food and recreation were significantly lower in Huron County than most other parts of the province. I have attached some minor significance to this.

(k) Ability to Pay

The Teachers submitted a thoughtful analysis on the ability to pay issue with a substantial amount of supporting data. They summarized their analysis by submitting that they did not purport to prove conclusively "ability to pay" but rather that taxpayers in Huron are neither poverty striken nor unfairly situated and are at least as able to pay as most other counties who are already paying salaries considerably in excess of the 1977-78 salaries in Huron County.

The Board also presented an impressive range of data showing relatively low average incomes in Huron County contrasted with those elsewhere in the Province, an exceedingly heavy reliance on farm income which had suffered relative to other income sources in the past several years, a tax base that lacked the desired mix of industrial and commercial assessments, a failure to implement a proposed provincial market value assessment base and with a tax burden on local taxpayers that had already resulted in considerable pressure on elected officials to hold the line.

The Board also pointed out that Huron County was already above the ceiling for provincial support of increased education assessments and significant increased educational costs in 1978-79 (anything over a 5% increase) would have to be borne entirely by the local taxpayer. On the other hand, with respect to this latter point, a substantial majoirty of Ontario counties are in the same position with respect to ceilings and that proportion will probably increase if provincial intentions to balance the provincial budget over the next three years are in fact realized, so that local taxpayers in most Ontario counties will have to shoulder the full burden of increased educational costs.

Using a thirteen neighbouring county comparison, the Board indicated that per capita income in Huron ($4,330) was second lowest, and that average yearly earnings ($11,694) were fourth lowest. This has some impact on ability to pay.

(l) The Grid System, The Need for Equal Percentage Increases

The Teachers submitted arguments in favour of equal percentage increases to maintain the relative purchasing power and relative standard of living of each teacher on the grid. The Board submitted that in these times of restraint it was appropriate that the gap between the better paid and poorer paid teachers be narrowed and that given serious limitations on the Board's ability to pay, attempts should be made to put as much money into the pockets of more junior teachers who were having a more difficult time meeting costs of living increases and whose salaries were closer to the predominant group of wage earners in Huron County than to provide proportionately greater dollar payments to the more senior teachers.

I accept the Teachers position that equal percentage increases on each position of the grid are appropriate. My reasons, without any particular order of significance, are these. First, the last settlement for 1977-78 in fact provided larger percentage increases for lower paid teachers than for the higher paid ones so that a readjustment in an immediately related time period has already taken place. Secondly, the use of the joint working committee to apportion global salary increases in earlier years provided opportunities for similar equalization moves to be made. Thirdly, the existence of a progressive income tax results in greater tax bite being taken from higher income earners than lower income earners so that some equalization is effected that way. Fourthly, the termination of the grid at the end of the tenth year means that the increment ceases at that point and teachers with more than ten years' experience (a relatively high number in Huron County) have an equalization factor applied to them by virture of the loss of increment. Fifthly, in coming to my conclusion on the remaining matters at issue I have taken into account that equal percentage increases have been made available in the salary grid.

(m) Catch-up

The Teachers submitted that a 5% upward adjustment - before anything else - would be necessary to cause Huron salaries to approach the average minima and maxima salaries across the Province. However, they did not propose a 5% but rather a 2% "catch-up" figure. This figure was based on a comparison with Kent County average salaries which had advanced approximately 2% beyond Huron's in that time frame and on the relationship that Huron salaries bore to the Provincial maximum in 1976-77.

I am not satisfied that the degree of "catch-up" proposed by the Teachers is appropriate here. Moreover, any catch-up should be focused primarily on a neighbouring county comparison and only secondarily on a province-wide comparison. My reasonsing is this. First, it would be necessary to trace these trends out over a longer period than two years to determine the degree of "catch-up" that is appropriate. Secondly, the relative distinction in average income between Kent County and Huron County is a significant one and a broader base for comparison is necessary. Certainly other matters such as work load and working conditions protection, declining enrolment projections, and ability to pay factors have a bearing on the degree to which "catch-up" is appropriate and the

time period over which it should be effected. I conclude that some minor "catch-up" recognition is appropriate but not the amount sought for by the Teachers here.

(n) Summary

In the analysis above I have attempted simply to highlight some of the agreements raised in extensively researched briefs from both sides. The attention given to the above mentioned factors should not be taken to imply any disregard of other factors raised I have considered them all.

Taking the cumulative impact of all the arguments into account I have concluded that an equal percentage increase across the grid at the upper range of recent trends provides both a modest catch-up and keeps pace with prevailing comparable salary determinations. The figure that seems to me best to balance all the relevant factors is 6 3/4%.

Lambton Secondary, 1977-78 - TEPLITSKY - pp. 8-9

Salary Matricies

The main thrust of the Teachers' argument involved the submission that the paramount criterion in setting salary is the cost of living and wage patterns for similar groups of employees in similar localaties. The similar localaties selected were Carleton, Ontario, Halton, Peel, Algoma and York because of average income as reported in income tax returns. Further, it was contended that the relative position of the Lambton Teachers was consistently related to those Teachers' salaries in those six communities as recently as 1975-76 but the AIB had destroyed that position.

The Board on the other hand argued that the appropriate comparables were County Boards in the immediate vicinity of Lambton, to wit, Kent, Elgin, Middlesex and Huron. They also proposed Bruce as a comparable although expressly recognizing that it was not as relevant. Mr. Stewart contended that the Board's comparables were appropriate because other than Bruce, they were contiguous communities with a relatively similar economic pattern, that is, each has major industry and a strong rural base as does Lambton. He submitted further that income comparability which was the basis of the Teachers' selection was irrelevant as there is no rational relationship between general levels of income in an area and earnings in a specific sector. Holding as I do that ability to pay is irrelevant, I agree with this submission.

In addition, I cannot accept the argument that the AIB caused the falling behind with the comparables selected by the Teachers. Revised tables 2A, 2B, 2C and 2D demonstrate that the falling behind started in 1973-74, accelerated in 1974-75, and was not increased in 1975-76 at least at maxima.

Renfrew Secondary, 1977-78 - SWAN - pp. 5-8

THE AWARD

1. Basic Teacher Salary Grid (1977-78)

As we have indicated above, there is complete data available of settlements in comparable employment across Ontario for the 1977-78 school years. Both parties have advanced a number of educational jurisdictions which they regard as comparable, and there is considerable convergence in the lists which they have presented. Each party has also attempted to delete certain educational juisdictions on various grounds. In our view, all educational jurisdictions in Ontario are comparable in some respects to Renfrew County, although there are clearly regional, demographic and economic differences by reason of which the salary figures in some might be given lesser weight. The most important, as both parties have recognized, are those jurisdictions contiguous to or in the near vicinity of Renfrew, although even here account must be taken of distinguishing factors. We have taken into account all the data present to us, and in particular information about contiguous or nearby educational jurisdictions, with which a certain salary relationship may be discerned over the period for which data was presented. In our view, no cogent case for a dramatic re-alignment of salaries relative to these jurisdictions was presented by either party. As a result, our award is designed to maintain comparability with these jurisdictions, with perhaps a slight upward adjustment to recognize that, particularly in comparison with such contiguous and similar counties as Lanark and Frontenac, Renfrew is a little low. We therefore award that:

> The Basic Teacher Salary Grid for the period September 1, 1977 to August 31, 1978 shall be calculated by increasing each position on the 1976-77 grid by 6.3% rounded to the nearest dollar.

2. Basic Teacher Salary Grid (1978-79)

In the second year of this contract, as we have noted above, there are a few data of other settlements in public education to assist us. We do not therefore have available an overview of how the various economic, social and political factors coming to bear on teachers' salaries have been translated into dollar amounts, as we had for 1977-78. Moreover, the end of the Anti-Inflation program means that settlements for 1978-79 will be released, for the first time in three years, from the artifical constraints of the guidelines established under that program. Some of the data available from other sections of the economy would appear to justify a rather higher percentage increase than we have awarded for 1977-78. Specifically, the rate of increase in the Consumer Price Index is now up from the rates obtained during the final months of the Anti-Inflation program, and there appears to be justification for predicting an increase in the order of 8 - 9% at least over the 1978-79 school year. The annual rate from July, 1977 to July, 1978, for example is 8.25%.

On the other hand, we have the 1978-79 settlements actually reported to the Education Relations Commission to date. At the time of writing this award, we had official Education Relations Commission data from 11 elementary agreements, 6 secondary agreements and 13 Roman Catholic separate school agreements. For the assistance of the parties we have identified these agreements in an attached list. We also were supplied, in the Teachers' brief, with data concerning 4 other secondary agreements where 1978-79 salaries are now available (Petawawa, North Shore, Waterloo and Elgin). Some of the salary grids available were generated by the operation of the fold-in of a Cost of Living Allowance formula. Others were the result of bargaining last year for a two-year settlement. Some, however, were produced by bargaining this year, beyond the Anti-Inflation program, for the current school year. What is note-worthy about these settlements is that they do not (apart from the COLA fold-in clauses) give complete protection against the increase in the Consumer Price Index during the past year. The level of settlements ranges from somewhere below 4% to a high of 8%, with most of the grids clustered around an increase of something over 5%. Although it is clearly too early to declare a pattern to be established for 1978-79 bargaining, we think these settlements must be given some close attention, expecially since there is nothing in the absolute salary figures to indicate that these settlements have been concluded under unusual circumstances, given the geographical and other forces operating on them. We can only speculate on the causes for such a phenomenon - declining enrolments, the threat of redundancies and the generally bleak economic outlook may all play some part. Whatever the reasons, however, we consider that these generally low settlements must operate to moderate our award, although there is scope for some minor upward adjustments.

Having reviewed all of the quite limited data available to us, we have concluded that a settlement in these terms would be reasonable, and we thus award that:

> The Basic Teacher Salary Grid for the period September 1, 1978 to August 31, 1979 shall be calculated by increasing each position on the 1977-78 grid by 5.5%, rounded to the nearest dollar.

Wentworth Secondary, 1977-78 - TEPLITSKY - pp. 5-7

In approaching the issue of a total compensation increase to be awarded excluding increment, I have attempted to achieve an award which reflects the following considerations: First, the historical relationship with the Hamilton Secondary Teachers which was emphasized in the joint submission of the parties to the A.I.B. and which also formed the basis of bargaining in 1975-76 should be respected. Second, the approximate parity which the Board seeks to maintain with its Elementary Teachers and which historically has been followed, should also be preserved. Third, the legitimate interest of the Wentworth Teachers to achieve wages and benefits reasonably equal to the provincial average must be recognized.

I asses the Wentworth Teachers' relative position at the end of the 1977-78 contract period as follows: Quâ the Hamilton Secondary Teachers, the Wentworth Teachers earn slightly less in wages and allowances but have a much better benefit package. The Hamilton Secondary allowances were emphasized but the data supplied to me demonstrates that those allowances are not nearly as substantial as suggested. On balance, the Hamilton Teachers are not more than $100.00 per Teacher ahead of the Wentworth Teachers. Quâ the weighted provincial average, the Wentworth Teachers are slightly ahead at maximum in categories 3 and 4 where a large percentage of the Teachers find themselves, slightly behind in categories 1 and 2 at maximum, and considerably behind throughout the rest of the grid. In percentage terms on the grid, the Wentworth Teachers as a group are approximately 2.3% behind the weighted provincial average for all Teachers. However, the benefits received by the Wentworth Teachers are better than the provincial average, with respect to O.H.I.P., group life, extended health care and sick leave accumulation. In my opinion, the Wentworth Teachers are less than 2% behind the weighted provincial average from a total compensation perspective.

Therefore, it appears to me that the case for catch-up for the Wentworth Teachers is not compelling. Given that comparables at best are only approximations, the Wentworth Teachers quâ their colleagues across the Province are faring reasonably well. Moreover, having decided to award a total compensation increase of 6.5% exclusive of increment, I believe that the relative position of the Wentworth Teachers quâ provincial averages will be further improved somewhat. In addition, I have not costed the improvement in benefits which I am awarding under surplus and redundancy.

Frontenac, Lennox & Addington R.C.S.S., 1977-78 - BECK - pp. 1-13

Before considering the details of the salary grid, there is an important threshold question to be decided. It is that of what criteria are to be used in selecting an appropriate salary increase. Involved in that question is the difficult question of whether Separate School Boards, as the Board contended, are to be treated differently from Public School Boards and, if they are, whether all Separate School Boards are to be compared on a province wide basis or whether one ought only to compare Separate School Boards in comparable socio-economic areas with a comparable enrolment. The Teachers, not unnaturally, take the position that a teacher doing the same work in a school that happens to be a Separate School should be paid on the same basis as a teacher who is doing the same work in a comparable Public School in the same area. Put simply, the Teachers say that if there is less ability to pay on the part of those who support the Separate School System that that factor ought not to be reflected in the salaries paid to the teachers - the teachers should not be asked to pay the cost of a Separate School system. Before considering that particular question I will deal with the more general question of the criteria to be applied.

Because it wished to be compared with Separate School Boards in comparable socio-economic areas with comparable enrolments, the Board contends that the criteria that ought to be applied are those laid down by Professor H. W. Arthurs for hospitals under The Hospital Labour Disputes Arbitration Act in the Welland City Hospital Dispute in 1965. It was the first award handed down under The Hospital Labour Disputes Arbitration Act. Professor Arthurs said that he would give the following comparative factors a great weight:

1. wages paid in 'comparable hospitals' i.e., those of similar type in communities enjoying a similar cost of living and average wage level;

2. trends in cost of living and average wages in the locality where the hospital is located;

3. trends in comparable hospitals.

He then went on to say that he would consider the following factors to be relevant:

1. difficulties encountered by the hospital in recruiting and holding staff;

2. trends in non-comparable hospitals and in non-hospital occupations where deserving of speical consideration;

3. trends in hospital wages generally.

Professor Arthurs also noted that he would accord "little weight" to the following factor:

1. wage levels in non-comparable hospitals

It is obvious that the Board's preference for Professor Arthurs' criteria is related to its case that Separate School Boards ought not to be compared with Public School Boards and, moreover, that Separate School Boards ought not to be compared on a province wide basis but only with those Boards that are comparable in terms of enrolment and socio-economic composition.

The Teachers rely on the criteria laid down by Mr. Justice Dubin in the Metropolitan Toronto Boards of Education case. In that case Mr. Justice Dubin made the following comment in laying down seven criteria:

"There are yardsticks which I think are relevant. In my opinion, the following factors, not set forth with any particular priority, must, at least, be taken into consideration:

1. The overall compensation presently received by the employees involved in the arbitration proceedings, including direct wage compensation, vacations, holidays and other excused time, insurance, pension, medical and hospitalization benefits, continuity and

stability of employment, and all other benefits received;

2. A comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees generally, (1) in the public employment in the community, and (2) in private employment in the community;

3. A comparison of the wages, hours and conditions of employment for the employees involved in the arbitration proceedings with the wages, hours and conditions of employment with other employees performing similar services within the same municipality and in comparable municipalities;

4. The average consumer price for goods and services commonly known as the cost of living;

5. Changes in any of the foregoing factors during the relevant period of time;

6. The economic climate of the day, including consideration of the gross national product and of the gross provincial product;

7. The interest and welfare of the public, and the financial ability of those who are called upon to pay the cost of the services being rendered.

In arriving at an Award, all these factors must be taken into consideration and not merely one."

The Teachers also rely on criteria set out by Owen Shime in the Wellington County Separate School Board Arbitration in 1973. In fact the excerpt quoted from Mr. Shime's judgment in that case does not really set out criteria but deals simply with the factor of Cost of Living. It must be noted that that case was decided in 1973 at a time at which inflation was running very high and was a major national issue. The argument that Mr. Shime addressed himself to is whether increases that attempt to keep up with cost of living, or exceed that of the cost of living, drive the inflation even higher. In other words, it was argued that the rampant inflation of that time ought to be taken into account in setting the award. The excerpt quoted by the Teachers from Mr. Shime's judgment is to the effect that the argument ought to have little weight in the arbitration process. Mr. Shime indicated that there was simply no proof that arbitration awards were capable of aggravating a rising cost of living and he then went on to deal with the cost-push theory of inflation. He concluded that "The Arbitration Porcess as an institution is not equipped to be a regulator of the economy. That function is properly the role of Parliament or the Legislature adopting necessary fiscal or monetary policies." I quite agree with Mr. Shime's statement in that case although I have some difficulty in seeing how it is relevant to this case except for the proposition that salary increases ought to keep pace with the rise in cost of living. There is no argument made

on behalf of the Board that the increase sought by the Teachers was going to have a general effect on the economy in general or on inflation in particular.

It seems to me that at bottom there is really not much difference between what Professor Arthurs was saying in Welland City Hospital Dispute and what Mr. Justice Dubin said in the Metropolitan Toronto Board of Education case. Mr. Justice Dubin's third criteria speaks of comparison with "...other employees performing similar services within the same municipality and in comparable municipalities." I suggest that there is really not much difference between that and Professor Arthurs' somewhat more specific first criterion that "wages paid in comparable hospitals, i.e., those of similar type in communities enjoying a similar cost of living and average wage level". The issue between the parties here is really over what constitues "similar services within the same municipality and in comparable municpalities" or, to be more specific, what are the comparable schools and what are the comparable school board areas for purpose of comparison. Regardless of whether one chooses Professor Arthurs' criteria or Mr. Justice Dubin's criteria the question posed before this Board as to what is the appropriate comparison would have to be answered.

The position of the Board is that not only is the relevant comparison between other Separate School Boards in Ontario, but should be even more particularized in that it should be other Separate School Boards with enrolments under six thousand. The Board in this case has an elementary enrolment of 4,076. The rationale for this position is that these Boards are similar to the Board in this case in that the students are spread over a relatively large urban-rural area and the Board has a more limited tax base to fund its educational programmes than both larger Separate School Board and larger Public Boards. The Board also makes the argument that the comparison ought not to be drawn with Separate School Boards in large districts in northern Ontario as these districts receive greater funding from the Provincial Government. With respect to comparison with Public Boards the Board readily admits that there is a noticeable difference between the salaries offered to teachers in the larger Public Boards and those in the smaller Separate School system on a province wide basis and in Frontenac County in particular. The Board offers two reasons for this difference; one is that administrative costs are shared by public elementary and secondary systems while Separate School Boards have only an elementary system. The second is that the tax base of smaller, more rural based Boards does not compare with that of a larger urban-centred Board. The Board then, in its brief, goes on to compare the enrolment of the Frontenac Public Board with that of the Lennox and Addington Public Board and also the school assessment of the Board with that of the Lennox and Addington Public Board and the Frontenac Public Board. The Board also makes the case that it has the additional tax burden of 463 grade 9 and 10 students for whom it receives only elementary school grants. The Board particularly makes the point that its offer is relatively competitive with the settlement in Lennox and Addington, the smaller rural based Public Board, and argues that Lennox and Addington Public School Board is not able to offer the kind of money that the Frontenac County Public Board is able to for the very same reason that the Frontenac and Lennox and Addington

Catholic Separate School Board is not able to. The Board further makes the point, through an attached exhibit, that such differentials are commonplace in Ontario when comparing Public to Separate Boards in the same municipalities. They say this fact is simply reflective of the arguments they have made which have been noted above.

The Board also goes into some detail into the way that the Province finances the School Boards in Ontario. The amount paid by the Province is expressed as a percentage of the Recognized Ordinary Expenditure (ROE) which is the ministerial grant ceiling. The amount that the Province will pay is expressed as a percentage of the ROE and varies from Board to Board. With respect to Separate School Boards, the Province pays a larger percentage of the ROE to compensate for the lower tax base, as the Board admits. Large increases in the Provincial grants enabled all School Boards to provide large increases in teachers' salaries from 1974-76. The Board admits that the Province pays a particularly large percentage of the ROE in the case of Separate School Boards and as a result most such Boards spend up to the ROE ceiling. For 1977, however, the Province has sharply cut the rate of grant increase with the result that the School Boards find it difficult to stay within the ROE ceiling. More specifically, for 1977 the Board received a 10.83% increase compared with a total of 71.43% over the previous three years. Thus, even with a 5.5% grid increase, the Board has budgeted for expenditures in excess of the ROE ceilings. And any such excess must be paid from the taxes of those who support the Separate School system.

The provincial grant to the Board, indeed to every School Board, must also be seen in the context of the tax base upon which each individual Board draws its dollars. In the instant case, the Board receives its support from home-owners and apartment dwellers who elect to send their elementary school taxes to the Separate system. The figures indicate that the Separate School supporters in the two counties have traditionally paid a slightly higher mill rate than the Public School supporter in the same area. (There was some dispute as to mill rates between the Board's brief and the Teachers' brief, but on a comparison of the two I am satisfied that the Board's brief is more accurate in this regard). The matter of mill rates and tax burdens and provincial grants get somewhat complicated but the following positions seem accurate. Because there is such a disparity between the assessment per pupil between the Separate and the Public elementary system the Province compensates by a provincial grant rate of 83.9% to the Board in comparison to a 59.9% grant rate for the Frontenac Public Elementary School system. The effect is that for every dollar spent on a pupil within the ROE, the local Separate School supporter pays only 16.1 cents while the Public School Supporter pays 40.1 cents. However, as noted above, the grants only go up to the ROE ceilings set by the Provincial Government. Every dollar in excess of the ceiling comes entirely from the local taxpayer. This is why the disparity in assessment per pupil becomes particularly important as the Separate School supporter is forced to shoulder a larger tax burden than the Public School supporter. For 1977, the Board has budgeted an expenditure of some $140,000 in excess of the ROE. According to the Board, this will require a rate levy of 5 mills in addition to the normal levy.

The Board says that every 1% increase on the salary grid above 5.5% will result in an extra 1.3 mills on the tax rolls. They argue that if the tax burden gets too high on the Separate School support to the Public School System to avoid such a large increase. As a result, they argue that the Separate mill rate must remain competitive with the Public mill rate.

The position of the Teachers very simply stated is that there ought to be equal pay for equal work. Moreover, they argue that this principal ought to have particular application within the same geographic area. While it is true that the Public Board does serve only Frontenac County and the Separate School Board serves in addition Lennox and Addington Counties, it is also true that the figures show that the majority of the Board's students live not only in Fronteac County but within the city of Kingston. Looked at another way, the Frontenac Public Board employs 566 elementary teachers within the same boundaries as 89.6% of the Board's teachers. Thus, argue the Teachers, the real comparison ought to be with the Frontenac Board of Education. As to the different resource base available to a Separate Board from a Public Board, the Teachers brief emphasizes the fact that it is provincial policy to equalize grants as far as possible to take account of special factors including sparsely populated areas. Indeed, the Teachers argue that the Board's own statement that taxpayers in the Frontenac Public Board area pay 40.1 cents of every dollar up to the ceiling while the taxpayers in the Separate School area pay only 16.1 cents of every dollar up to the ceiling proves the Teachers' point. In short, the point simply is that the provincial Ministry of Education makes an effort to equalize per pupil spending for education on a province-wide basis.

The Teachers also take issue with the statement that Separate Schools are always runners-up to Public Boards in salaries. In particular, they point to Peterborough where the Separate School Board is superior comparing minima and maxima in thirteen of the fourteen points on the scale. The Teachers also argue, and this is really the heart of their submission, that it is simply not justifiable to ask the Board's employees to subsidize the running of a Separate School System in Frontenac, Lennox or Addington. They say that the economic cost or ability to pay of a company or a public body is not a valid argument to raise against the demands of the employees. In this regard they quote the remarks of the Honourable Emmett M. Hall in his Railway Arbitration of 1973. Mr. Justice Hall's remarks in that arbitration were to the effect that railway employees could not be asked to subsidize the carrying-out of a commitment made in the national interest. What Mr. Justice Hall was talking about in that case was the commitment to run a national railway system which he described as a national policy. Looked at from that point of view, he argued that it was not justifiable that the employees of the railway should pay for the costs of a national policy. If it was national policy that there was to be a national railway system then the country as a whole should pay the bill. I would suggest that that is a much different principle than is being argued for here. It cannot seriously be argued that ability to pay, whether of a public or private body, ought not to be a relevant concern in any interest arbitration. If the general point being made is that employees in Public Service areas should not be forced to accept wages below those in comparable

Private Sector areas simply because they are in the Public Service and dependant upon tax dollars then I quite agree - but that is a very different point than the one argued for by the Teachers in this case. The Teacher's case is that if the supporters of the Separate School System wish to maintain that system then they simply must be prepared to bear the cost of wages which are comparable with those who are doing similar work in a similar economic area.

The threshold issue presented is one of some difficulty. There is no question that Separate School Boards in this province do seem to pay somewhat less than the Public School Boards (the figures will be examined in more detail below). Moreover, notwithstanding a provincial policy of equalization, insofar as grants fall below the provincial ceiling and insofar as a board's budget exceeds that ceiling, it must depend upon the local tax base to make up the dollars. As such, Separate School Board supporters are bound to pay somewhat higher taxes to support the Separate School system. In a board that covers both a rural and urban area, the assessment per pupil is bound to be somewhat lower, even considerably lower, than a Public Board which is centred primarily in an urban area. All of this reflects, to an extent, on a board's ability to pay its teachers. It does not, however, answer the question as to whether the teachers themselves ought to subsidize a Separate School system through lower wages than are paid to their counterparts who do exactly the same work in exactly the same area. In my view, the Separate School teachers ought not to be asked to assume that burden. I am of the opinion that the comparable school boards for the Board in this case are the Frontenac County Board and the Lennox-Addington Board. Those who want their children to attend Separate Schools must realize that some additional cost must be paid for that preference. It does not seem to me to be right that they should ask those whom they employ to pay part of that cost. The Board argues that if the discrepancy between the tax load on Separate School supporters and Public School supporters becomes too great, that support will be switched to the Public Schools thus endangering the survival of a separate system. This argument amounts to saying that the tax load on parents who prefer separate schools should be kept down by paying less to separate school teachers than is paid to public school teachers in the same area. I fail to follow the logic or equity in that argument. If there is to be private subsidization of a separate school system, surly it should be by those who wish, for whatever reason, to see that system survive and flourish, rather than by those who are employed in the system. However, it cannot be denied that province-wide figures do indicate that those employed in the Separate School system have been paid somewhat less than those employed in the Public School system. However, the discrepancy is not as great as the Board's brief would have one believe. Of the fourteen school boards provided in the Board's exhibit, three Separate School Boards are ahead of their public counterparts, four boards are extremely close to their public counterparts and seven public boards are clearly ahead of their separate counterparts. However, even there one must be careful of generalization as the variations can be as little as $200 or as great as $2,000 as one looks at the minima and maxima across fourteen points on the grid.

Having said that I do not believe that the teachers in the Separate School system ought to be called upon to subsidize that system through the wages they are paid for comparable work to that performed by teachers in the Public School system, I do not conclude that the difference can be made up in one settlement. It is clear that we are living in a time of economic constraint. It is also equally clear, as the Board's brief points out, that the provincial grant to the School Boards has been dramatically reduced for 1977 over what it was for the past few years. Wage settlements in the economy as a whole, partially due to AIB, are simply not on the order that they were some two, three and four years ago. The ability of the Board to pay, in terms of the reduced level of grant, difference in assessment per pupil, and by comparison with what is being paid elswhere in Frontenac and in Lennox and Addington County is certainly relevant. On the other hand the figures do seem to indicate that 5.5% increase would leave the teachers employed by the Board considerably behind not only their public counterparts in the same area, but behind the average settlements for the Separate School Boards in the province. On the figures supplied by the Board, an increase on the grid of 5.5% would leave the teachers behind the average 77-78 settlements of all the provincial Separate School Boards on five of seven points at the maximum and at all seven points at the minimum.

The three settlements that the Board's 5.5% offer ought to be compared with in my view are the 1977-78 settlement figures for the Frontenac Public Board, and the 1977-78 average Separate School Board settlements across Ontario, and, to a somewhat lesser extent, the Lennox-Addington Public Board. With respect to the Frontenac County Public grid, I take the composite minima and maxima as set out on page 8 of the Board's reply brief. As the Board pointed out in that brief, the grid provided by the teachers in their reply brief is not that for 1977-78 but is only for the period January 1978 to August 1978. What the Frontenac Public School teachers actually received from September 1, 1977 to August 31, 1978, is 40% of the salary grid for September-December 1977 and 60% of the salary grid for January-August, 1978. The composite minima and maxima that is in effect for the 1977-78 academic year, calculated on the 40-60 formula are as follows (these figures have been confirmed by the Education Relations Commission).

	Cat. D.	Cat. C.	Cat. B.	Cat. A1	Cat. A2	Cat. A3	Cat.A4
Min.	9,995	10,729	11,352	11,710	12,200	13,425	14,038
Max.	13,547	15,997	17,712	21,390	22,247	24,700	25,997

Kent Secondary, 1978-79 - KENNEDY - pp. 5-11

As previously stated, the Teacher argument is founded totally on the principle that the appropriate measure for determining salary levels in Kent County is to adopt Provincial median figures that result from collective agreements negotiated or arbitrated elsewhere.

The Teachers find the genesis for this argument in what they interpret to be the effect of the O'Shea Award. It is their claim that when a comparison is made of the salary levels settled by the O'Shea Award with the Provincial medians for the same contract year there is a striking similarity in the grids that result. It is, therefore, their argument that the guidance provided by the O'Shea Award is to the effect that Provincial medians constitute the appropriate salary level in Kent County. This, they claim, constitues a rational basis for settling salary demands.

While the Teacher approach does have the appeal of simplicity, it is, with the utmost respect, totally lacking in logical substance. It focuses solely on a single factor that constitutes only one of the numerous indicators which arbitral authority and, indeed, the School Boards and Teachers Collective Negotiations Act, 1975, indicate are to be considered in rationalizing salary demands. In seeking such a simplistic solution, the Teacher argument falls into that common statistical error wherein co-relation is assumed to prove cause and effect. We are not persuaded that the relationship between the O'Shea Award and the Provincial medians is other than accidental. Firstly, in the Award itself at page 7 Arbitrator O'Shea states as follows:

> "Although we have attempted to weigh and assess all the various economic factors to which we were referred, we do not propose to attempt to tie our findings to any specific factor since many of our findings are based on a mix of factors which we have endeavoured to balance in light of the representations of the parties. Indeed, to do otherwise, would be to invite further conflict between the parties since each party would likely be convinced that greater emphasis should have been placed on different factors."

It is, therefore, clear from the Award that Mr. O'Shea did not purport to follow the single indicator aproach now asserted by the Teachers as being the proper implication from his Award. Secondly, the actual comparisons of E.R.C. medians and the arbitrated grid for 1975/1976 as set out on page 5 of the Teacher brief indicate that in point of fact here is a mathematical variation between the minimums and maximums in the O'Shea Award and those of the Provincial medians of from $53.00 to $523.00. The relationship is, therefore, not quite as precise as suggested in the Teacher argument and it is clear to us that while Provincial medians can constitute one useful basis of comparison, they cannot be given either paramount of exclusive importance.

We feel that there is a further and even perhaps more substantive objection to the approach argued by the Teachers. The purpose of the collective bargaining process is for the parties to evaluate their needs and priorities and to reach on their own a satisfactory settlement of the terms and conditions of employment.

In the normal course of events, it is hoped that this process is not excessively protracted and, indeed, experience has shown that contracts can be settled either before or shortly after their actual commencement date. Provincial median figures cannot become available until, in essence, the process has operated properly in several other jurisdictions. The adoption of a measure dependent on what third parties do is really an abrogation of the obligations and responsibilities of the parties to identify and define the issues in dispute and to make every reasonable effort to conclude an agreement.

It is of further interest to note some comments of the fact finder on this particular aspect of the matter. The Fact Finding Report of Mr. M. A. F. Stockton is dated October 16th, 1978, and on page 8 of that Report he makes reference to the fact that the Teachers rationalized their request on the basis of weighted average salaries from 1977/1978 agreements around the Province. At page 10 the Report contains the following statement:

> "In the Fact Finder's opinion, the use of a Provincial average is only one of several criteria to be used in considering what is a fair level of compensation, and it must be used carefully since amongst the sixty-nine Boards included in the average are many of the more than twenty Northern District Boards, the five City Boards and several extremely urbanized County Boards. Many such Boards have traditionally paid higher salaries for a variety of reasons, not the least of which is to compensate for the relatively higher cost of living in their areas. The Fact Finder feels that an equally, if not more valid comparison, is to be made by examining settlements in those Counties with a similar economic base, and those Counties which the Board has cited would seem to be in that category."

Those views of the Fact Finder accurately reflect the views of this Board of Arbitration with respect to the usefulness of Provincial statistics.

The salary grid proposed by the Board has not adopted a uniform percentage rate of increase. Rather, the increases at various steps range from a low of 2.9% at minimum category 1 to a high of 6.3% at maximum category 2. At minimums, the range of percentage increase is from 2.9% to 4.4% and at the maximums from 4.4% to 6.3%. We were not advised, either in the brief or in the course or oral argument, as to what philosophy lay behind the structuring of the Board's grid proposal but it clearly does have the effect of altering the relative positions within the grid. The same result, of course, flows from the Teacher proposal tying the grid to Provincial medians, but in view of the fact that neither party directed any particular argument to the effect that there was any particular inequity in the grid structure, either as existing or as proposed, we must assume that they have no particular problem

in that regard. It would appear that the Board proposal results in grid increases in the general range of 4.5% to 6.0% at the steps where the substantial portion of the Teacher population is to be found. Increases of a similar scale are proposed for principals and vice-principals.

In support of its wage proposal, the Board initially drew attention to what it considered to be a generous overall benefit package provided for in the Collective Agreement. It would be our view that while that package is a very significant cost item it is not, in fact, out of line with what is customarily provided in the teaching area. Comparisons were then drawn between teaching salaries in Kent County over the last few years and wages paid generally in the community in both the public and private sectors. In view of the fact that this arbitration is proceeding so late in the year, such statistics are generally available for the actual year under review and those comparisons indicate that the Board proposal is generally in line with trends elsewhere. The Board brief also deals with the economic criteria, such as trends in the cost of living and changes in productivity with reference to economic conditions in general.

With reference to comparisons within the teaching area there is, again, considerable established data from other settled contracts in the same geographic area. The Board has reached a settlement with its elementary panel and the Board proposal to its secondary teachers is, in fact, identical to the salary levels settled at the four relevant categories for the elementary teachers. It was suggested in rebuttal by the Teachers that the elementary settlement should not be persuasive in view of the many differences between the elementary and secondary sectors. Reference was made to the different certification procedures, different priorities and working conditions, and different distributions of teacher population. We recognize that there are, in fact, differences between the two panels, but it must equally be recognized that there are many similarities. Of the 562 members of the elementary panel, 336 are to be found in the four qualification levels that correspond to the secondary contract. The fact that some certification procedures may be different and perhaps more easily obtained at the elementary level cannot alter the fact that a more significant number will, in fact, have comparable qualification and experience. We would, therefore, consider the settled elementary contract a relevant guideline in evaluating the secondary proposal.

When considering surrounding school boards, contracts have been settled in 1978/79 by the secondary panels in eight of those Boards. The Board filed with us comparisons of its proposal and the actual settlement in those Boards prepared on the basis of taking the makeup of the Kent County Secondary panel and placing and costing it as if it were operating under the collective agreement in the surrounding Boards. On a total compensation basis, that comparison would indicate that the Board proposal in Kent County would place it third highest of the nine Boards being considered. That same relative position was held in the 1977/78

school year under the Agreement that was settled between the parties. By way of rebuttal in this area the Teachers suggested that if surrounding Boards were to be selected, Windsor and London should also be included, but we were not provided with any figures factually drawing comparisons with those jurisdictions. If it is assumed that levels of compensation in those urban Boards are, in fact, ahead of those being offered by the Board in Kent, this still will not alter the fact that the Kent proposal would appear to be superior to the settlements in six neighbouring Boards in a comparable geographic and economic area. In summary, we cannot find on the materials and arguments presented justification for awarding an increase in wage levels in excess of that proposed by the Board. As stressed earlier, there is no single magical factor that will provide the definitive measure of an appropriate salary level. It involves a consideration and a weighing of numerous criteria and it has been shown to us that those criteria are reflected in the Board proposal. It is our view that the Board of Arbitration ought to proceed based on the information and materials put before it by the parties and we consider the basis of the Teacher proposal of selecting only one of the many criteria to be unfounded either in logic or arbitral precedent. Accordingly, it is our award that with respect to salary grid, the proposal of the Board will be adopted.

Kirkland Lake Secondary, 1978-79 -- BURKETT - p. 5

In the area of compensation we have taken the approach that the teachers employed by the Kirkland Lake Board of Education should maintain their approximate dollar position vis-a-vis the other "corridor" boards. We have not been satisfied, given the local conditions, that this is the time to do more. We are fearful, however, that to do anything less might create a difficult obstacle to bi-party settlement of the issues open for renegotiation in the third year of the contract.

Northumberland & Newcastle Secondary, 1978-79 - KENNEDY - pp. 5-8

Each party is, in effect, proposing a substantive change in the grid structure and practices freely negotiated between them in past years. Very little was said in the Teachers' brief with respect to a rationale for going to a split grid, and the advantage of such a practice to the Teachers in the heavy weighting of the last months of the Agreement is obvious as setting a base for future negotiations. A split grid can be justified in situations where salary levels have fallen behind those paid in comparable jurisdictions on the basis that it permits the parties to restore the final salary level to an appropriate level while reducing the cost impact to a Board of making a catch-up in one year. Those factors do not exist in this arbitration, and we are not prepared to follow the split grid proposal of the Teachers.

The Board proposal of a uniform level increase to all teachers, principals and vice-principals again has the effect of substantially altering the established grid structure and salary relationships which the parties have negotiated. The Board supports this proposal on two grounds. Firstly, the effect of the S.T.S. system over a period of time is that the steps in the grid become accentuated and the grid significantly widens out. This factor is indeed confirmed by the various comparisons contained in the briefs of both parties. In comparing the Board's salaries with comparable Boards and with provincial averages, it is seen that that comparison is much more favourable at the higher ranges of salary than it is at the lower ranges. We accept, as a fact, that the long-term effect of the S.T.S. system is to widen the gaps within the grid, but again the argument of the parties was not really directed at whether or not such a feature is either good or bad. The second argument in support of the Board position is that in a period of inflation, people at the lower end of salary ranges suffer more in comparison to those at the higher salary ranges and that to the extent a salary increase is intended to compensate for inflation, it is reasonable that the same allowance be given to all employees. That argument would appear to have some merit. In support of the maintenance of the S.T.S. structure, it is stated in the Teachers' brief as follows:

> The philosophy of this is based on the connection that a salary structure should reflect professional excellence. The teacher who achieves the S.T.S. level holds the highest certificates granted by the Province of Ontario and has spent a minimum of 12 years in the profession. Thus, his or her academic background has been established and the teaching competence has been observed and evaluated over a sufficient period of time to discern competence and reliability of performance.
>
> In all these efforts, including the S.T.S. principal in Northumberland Newcastle, an effort has been made to rationalize the salaries and establish some relativity to the actual job and the professional criteria associated with it. It is, in essence, a "job value" concept and an intelligent approach to the problem.

We would agree that the appropriate grid structure is subject to philosophic differences, and it would appear to us that the arguments of the Teachers would, in fact, be stronger had the original S.T.S. percentages been something other than a mathematical reflection of the salaries and allowances in force at the time it was decided to adopt an S.T.S. structure. It must be recognized that any basis of grid structure can become out of date, and while we are not satisfied that the existing structure in Northumberland Newcastle represents the philosophic excellence abscribed to it by the Teachers, we are equally unpersuaded that the Board has demonstrated to us a positive basis for introducing change. We have not been told why a widening of the grid structure is prima facie undesirable, and more important, we have not been shown that

the grid structure that will result from the change proposed by the Board is, indeed, superior. We do not feel it appropriate in the context of an arbitration to depart from practices and procedures developed by the parties in the course of free collective bargaining unless there is a clearly demonstrated basis to do so. It will therefore be our award that the S.T.S. structure be continued during the currency of this Agreement.

With respect to the number to be assigned as the S.T.S., it is interesting to note that the parties selected substantially the same comparable Boards in making salary comparisons. The parties have also referred to settlements in the private sector in the same geographic area, and to trends in inflation and productivity. Since the Board proposal represents an approximately 5.5% increase and the Teachers' proposal a 6.2% increase, the parties are both well within the range of reasonableness and statistical analysis does not really assist in getting a greater degree of precision as to an appropriate salary level. We have considered the various materials filed with us, and in reaching a conclusion as to the S.T.S. figure, we have attempted to maintain the same relative position as existed in previous years between Northumberland Newcastle and the Boards which the parties agree are comparable Boards of Education and also with respect to the provincial relationships as publiched in the statistical summaries of the Education Relations Commission. In making those comparisons, we have focused particularly on the maximum Category IV salary figures since it is inherent in an S.T.S. structure that that is the figure upon which the parties have placed greatest stress. We recognize that there is a settlement for the year in question between the Board and its elementary teachers, but in the course of that settlement, the elementary teachers voluntarily agreed to accept the uniform lump sum increase to all teachers, a principle which the secondary teachers are not prepared to accept. Accordingly, the maximum category for elementary salary becomes of less significance to this determination in view of the fact that there will be proportionately greater increases in the lower salary ranges. After considering all of the foregoing matters, it is our conclusion that the appropriate S.T.S. figure for the 1978-79 Collective Agreement between the parties is $28,000.00.

Sault Ste. Marie Secondary, 1978-79 - DOWNIE - pp. 4-11

Because of today's uncertain economic environment and the relatively small number of teacher/board settlements in Ontario, the level of salary increases is a most difficult matter to decide. The parties at the termination of their negotiations were far apart on the issue. At the hearing, the Board proposed an increase to the Teachers', Principals' and Vice-Principals' salary schedules in the first year of $475 on each grid position plus a further increase of 2% across the salary grid. According to the Board, this would constitute an average increase of about 3.8%, excluding increment. The Teachers proposed an 8.4% increase on

each grid position on the Teachers', Vice-Principals' and Principals' salary schedules. In the second year, the Board proposal calls for a 4% increase on all positions on all three salary schedules. Instead of specific salary increases for 1979-80, the Teachers' proposal calls for the determination of a salary increase for September 1, 1979 through a one-for-one COLA clause. For example, if the cost of living (as measured by the C.P.I.) increased by 6% from August 1978 to August 1979 (i.e., over the first year of the two-year contract) then each grid position on the Teachers', Vice-Principals' and Principals' salary schedules would be increased by 6%. If, instead, the increase in C.P.I. was 12%, the salary schedules would increased by 12%. After September 1, 1979 the COLA clause would be inoperative; the salary increase generated for September 1, 1979 would be a one-time increase.

There is merit in noting here the frequently quoted statement by Mr. Justice Dubin in his award between the Metropolitan Toronto Board of Education and the Ontario Secondary School Teachers' Federation (1976):

> When an arbitrator "splits the difference" he assumes the role of mediator rather than arbitrator ...there may be cases in which the result arrived at by an arbitrator properly results in an award which falls between the positions of the parties. Such a result should only be arrived at where the evidence accepted by the arbitrator supports such a finding. If such a result is arrived at for any other reason, the arbitrator is not acting judicially.

The evidence in this case does support an award between the positions of the parties.

The Board's proposal is clearly too low given the current economic environment. A major component of their case rests on the fact that the Board is finding it increasingly difficult to finance increases during a time of restraint in provincial grants and declining enrolment. They presented a secondary school budget projection for the period 1978-83 which made specific assumptions with respect to cost increases, enrolment declines and provincial grants which they suggest demonstrates the very serious burden which will be placed on their local taxpayers by 1983. It was emphasized, as well, that in 1978 for the secondary school panel the Board is spending $1.5 million over grantable ceilings. It is now a principle in interest arbitration, and one that I subscribe to, that ability to pay is to a large extend a non-issue in the public sector; that it is not a valid argument against the otherwise legitimate demands of public sector employees. This has been articulated by Owen Shime in his B.C. Railway award (1976) and by the Honourable Mr. Justice Emmett Hall in his award covering Railway Workers in 1972. A variety of arbitrators have concurred with the principle in a number of awards in Ontario education. I have recommended elsewhere that teachers should not be required to subsidize loxal taxpayers by accepting second rate salary increases. At the rates of increase proposed by the Board, the teachers of Sault Ste. Marie would lose ground relative to other teachers given the current rates of increase being negotiated across the province.

With respect to the Board's argument regarding restraint, it must also be added that other boards in the province are under the same restraints due to the size of provincial grants and declining enrolment. And other boards are spending above grantable ceilings. Indeed, Dean D. L. Johnston in his recent award covering Huron County teachers made exactly this point in dealing with the board's submission in that case.

> On the other hand, with respect to this latter point, a substantial majority of Ontario counties are in the same position with respect to ceilings and that proportion will probably increase if provincial intentions to balance the provincial budget over the next three years are in fact realized....

In short, the Sault Ste. Marie Board is not a special case.

At the same time, the other side of the above principle is that the public should not be expected to subsidize salary increases above the norm. The public sector employer, according to the criteria, should be a good employer, not necessarily the best employer. Moreover, this is an era when restraint is required in the public sector, including education. Each Board must carefully control their expenditures. It would be irresponsible to ignore the consequences on local taxpayers by offering exceptionally high salary increases. In this sense particularly, the Teacher's demand for an 8.4% increase, excluding increment (at a cost of about 10.5%, including increment) is too high. At the current rate of inflation and given the probable increase to provincial grants for 1979, their proposal for the second year is excessive, as well.

I do not accept the principle that all employees should automatically keep pace with the rate of inflation. There will be periods and instances when salary increases should exceed the inflation rate and cases and instances when the reverse should be the case. In education today, the latter is the norm. Parenthetically, I should also emphasize that cost-of-living, if it is considered, is of primary concern in interest arbitration for the purpose of awarding increases, not to keep pace with inflation, but to take into account large losses in purchasing power over the life of the previous agreement. While the Teachers have lost some purchasing power during the life of the 1977-78 agreement they did negotiate an increase for that period of 7.6%, excluding increment. This is a sizable increase and compares favourably with other teacher increases in the province. I have concluded, in any case, that my award should provide for increases less than the current rate of inflation, although I have taken cost-of-living into account along with a number of other factors.

There is also the criterion of fair comparisons with boards elsewhere and other teachers of the Sault Ste. Marie Board. The award should be in line with the general experience in Ontario education. At this point in time there have not been a large number of settlements in Ontario education but a fairly clear picture is beginning to emerge. The settlements that do exist, including the salary increases awarded in four arbitrations suggest

that most increases will fall in the range of 5.0% to 7.0%, excluding increment. The arbitration award in Huron County for 1978-79 calls for a 6.75% increase to each position on the grid; in Wentworth County an average increase of 6.5%, excluding increment; in Lambton County a 7% increase to every grid position; and in Renfrew County a 5.5% increase to every grid position. The 1978-79 increase called for at the Essex County Roman Catholic Separate School Board through final-offer-selection is 6.8%, excluding increment.

The Teachers provided data on 1978-79 increases negotiated at five boards contiguous to Sault Ste. Marie. Unfortunately, because they are so isolated (in the geographical sense) three of the boards are not really suitable for comparison purposes. At the other two, Central Algoma and Espanola, negotiated increases for 1978-79 at the minima and maxima of all categories are roughly 5.5%.

Another aspect that must be considered is that the Sault Ste. Marie Board has settled with their elementary school teachers. The agreement covers the 1978-79 and 1979-80 school years and provides for average increases of 6.36% in the first year and 7.49% in the second year, excluding increment. Therefore, the Board's offer to the secondary school teachers is substantially below their elementary school settlement. The Board argued in their brief and at the hearing that the elementary school teachers have achieved parity of pay with the Board's secondary school teachers in 1973-74 but then lost parity because of the timing of negotiations and the impact of A.I.B. rulings and that it was now the Board's intention to bring the two salary grids closer together by increasing the elementary school grid by a greater amount than the secondary school schedule.

Finally, both parties provided comparisons with groups outside of education. The Board submitted data on outside salary levels in comparison with those of their secondary school teachers, while the Teachers presented information on wage increases outside of education and in the local community. This highlights the difficulty in attempting to relate teacher compensation with outside groups. It is extremely difficult to make meaningful comparisons and each side can very easily present data to support their position. While external comparisons (i.e., those outside of education) are of some relevance, in this case they should not be determinative. For what it is worth, base rate increases in Canada over the past couple of quarters have been in the order of 6.5% to 7.0%.

Before stating the precise magnitude of my award, there remains to be decided the issue of the type of increases. For 1978-79 the Board is proposing a combination of an absolute increase coupled with a percentage increase; the Teachers a straight percentage increase across-the-grid. I have written on this matter elsewhere and it bears repeating. By and large, salary structures for professionals (including teachers) result in maximum salaries roughly 2.0 to 2.5 times minimum starting salaries. This is precisely the concept salary schedules are designed to capture.

Education Relations Commission
Ontario

Therefore, in the early years after entering a profession, salary increases are made up of two parts -- an across-the-board percentage increase which raises the entire salary structure, plus an increment for merit, promotion and additional experience. It is for this reason that third parties almost invariably hold that, while the increment is a relevant consideration as a Board cost, it is not for salary comparison purposes. The fact that salary schedules in education include an increment for experience and satisfactory performance, rather than merit, does not diminish the importance of the concept. In periods when salary increases are relatively high as they are today, it is necessary to increase the salary structure, with only minor variation, in an across-the-board percentage fashion in order to maintain the integrity of the salary structure. By so doing the relative amount being paid as increment is maintained. If not, the purpose of the salary schedule is seriously jeopardized and the structure is distorted. There may be occasions when different percentage increases are called for at various grid points, for example when teachers are in short supply. But this is not the case today in education. My award, therefore, calls for across-the-grid percentage increases for teachers in both years.

Peel Elementary, 1979-80 - KENNEDY - pp. 5-8

For the second year contract, the Board proposal is for a dollar value at maximum Category 7 of $29,600.00. The Teacher proposal is for a split grid and for the period September to December, 1979, the maximum Category 7 level is set at $29,883.00. For the period January to June, 1980, the maximum Category 7 is requested at $30,921.00. On an annualized basis it is the position of the Teachers that the split grid is the equivalent over the year to a maximum Category 7 figure of $30,503.00. The Teacher request is effectively for a 10.7% increase on end rates whereas the Board proposal represented a 5.83% increase on the grid rates based on the Board offer for the first year. Each of the parties in the materials filed on the Hearing has presented extensive statistical evidence in support of the position being maintained based on the traditional factors relied upon by arbitrators in interest disputes. From those materials it would appear that the general trends of settlement for the 1979/80 teaching year are running in the area of 7% and apart from the necessary adjustments to apply the fixed ratio grid no argument was made that in general the Peel salary rates were in any sort of a catch-up position.

A significant portion of the Teacher argument is based on a consideration of the salary levels paid to the equivalent categories in the Secondary School panel by the Board and, indeed, statistical evidence contained in the Board's brief would appear to establish that there was in effect parity in the four common categories between the two panels in 1972/73 and 1973/74 teaching years. As previously stated differences were negotiated by the Teachers so that subsequent to the 1974/75 years the elementary salaries in Categories 4 to 7 have generally been behind the secondary salaries in effect for the same period of time although there are instances

when in the minimum categories the elementary was ahead. In any event at the maximums the secondary salaries have for some years been significantly in excess of the maximums in the equivalent elementary categories. The Teachers now seek to restore parity with the secondary system which uses the same basic grid structure in common categories and for the 1978/79 school year the maximum in Category 4 for the secondary was $28,760.00. The 1979/80 contract has not been settled, but the Board offer to the secondary is for a maximum in Category 4 of $30,143.00. The Teachers anticipate that the actual settlement in the secondary will, in fact, be significantly in excess of the present Board offer, but for the purposes of this arbitration we do not have the benefit of what the actual secondary settlement will be. In any event, while we would recognize that the secondary settlement would, if it had been completed, be a relevant and probably a significant factor in determining what would be a fair and reasonable salary level for the elementary we do not consider that it should be considered as being a conclusive measure any more than should any of the other factors traditionally relied upon by arbitrators. We are quite prepared to recognize that there ought to be some comparability between the elementary and secondary panels within the same system, but we do not accept that that automatically means parity. It must be recognized that the situation that has arisen between the two panels resulted from negotiations conducted between the parties and since it has developed over a period of time it would be only reasonable to anticipate that if a balance is to be restored that should also be done over a period of time. We recognize that the split grid concept proposed by the Teachers is, in fact, intended to reduce the direct cost impact of attaining the end salary rates, but it is our view that the Teachers proposal in fact produces rates that are excessive both in the light of comparable salaries paid elsewhere and in the light of what may reasonably be anticipated as a level of settlement with the secondary panel. We feel that on the basis of general trends in the economy and settlements elsewhere an increase in the neighbourhood of 7% can be justified, and we further feel that because of the unique situation to which the parties have agreed in accepting the fixed ratio grid, some additional cost factor can be justified in restoring what would appear to be traditional relationships within the Peel system. In the result, it is our award that for the period September to December 1979, we adopt the salary grid as proposed by the Teachers wherein the maximum Category 7 amount is set at $29,883.00. For the balance of the year, commencing January 1980, we would adjust the maximum Category 7 to $30,200.00. With respect to positions of responsibility for principals, vice-principals, co-ordinators and curriculum assistances, we would award a similarly split grid and, based on the proportions as specified in Schedule 1 to this Award.

We do not wish to party from this arbitration without expressing our appreciation to the parties for very complete and comprehensive briefs in support of the positions being asserted. They contained very complete data comparing the Peel situation with rates of compensation elsewhere in the teaching industry, and also with respect to trends elsewhere outside of the teaching area. Comparisons with trends of the cost of living and general productivity

were provided and we were, of course, conscious of the arbitral standards referred to by the parties in the various awards which were brought to our attention. While we have not found it necessary in the course of this Award to review in detail the various compensation and economic criteria and comparisons to which we were referred, we have all found them most helpful in reaching our conclusions. Our task, by necessity is to determine an actual number to govern salary levels for the term of the contract; whereas the cumulative effect of all of the criteria upon which it is appropriate to rely is generally to indicate a range of reasonableness wherein that salary level will fall. In reaching that final conclusion, there is, of necessity, a degree of subjective judgment involved which we have exercised to the best of our ability.

Halton Secondary, 1979-80 - TEPLITSKY - pp. 4-5

The Board's offer for 1979-1980 has been, throughout the negotiations, parity with the elementary panel. In fact, such parity has existed traditionally. However the elementary settlement, for reasons which no doubt were valid for these Teachers and the Board, did not apply a uniform percentage increase to each step on the grid. This represented a departure from previous bargaining patterns. Increases range from a high of 10.35% to a low of 5.43%. The effect of this distribution would result in a salary of $29,999.00 at category 4 maximum. Prior to 1979-1980 the secondary teachers in Halton at category 4 maximum were above the provincial average. A salary of $29,999.00 would put them below the provincial average. No reason exists for my imposing such a shift in relative positions.

An analysis of the salary levels of Boards in the Golden Horseshoe discloses an average salary at category 4 maximum of approximately $30,400.00. An increase to this grid of 7% results in a salary of $30,446.00, which not only maintains these Teachers' position quâ the provincial average, but provides a level of remuneration consistent with Teachers in neighbouring communities. It must be remembered that comparisons with other Boards such as Hamilton, with a category 4 maximum salary of $30,906.00, are misleading, without reference both to the balance of their grid, which is inferior to the Halton grid, and to the balance of their Agreement. Differences of $100.00 or $200.00 are not significant and do not form any sensible basis for "catch-up". In fact, apart from Lincoln, there is not much more than a 1% differential between all of the Teachers in the Golden Horseshoe in category 4 maximum. I note that the latest E.R.C. data indicates that the average increase in category 4 maximum across the Province has been 7%. It is, therefore, my award that 7% will be applied to each step in the Teachers' grid.

North York Secondary, 1979-80 - TEPLITSKY - pp. 9-10

The Board is proposing for 1978-79 and 1979-80 the same salary and benefit package that every other Board in Metro settled with for their Secondary Teachers. For 1980-81, the Board is suggesting 7.25% which is the percentage necessary to match the Elementary Teacher settlements currently in place.

The Teachers have accepted the 1978-79 offer albeit they consider it too low. For 1979-80, the Teachers seek a 5% increase effective September 1, 1979 and a further 3% effective January 1, 1980. They presented no third year position.

There is undoubtedly a historical relationship between the several Secondary panels in Metro and between the Secondary and Elementary panels. Almost all of the Teachers in Metro, both Elementary and Secondary, have for 1979-80, negotiated the same salary. (Toronto Elementary has not yet settled). Although Mr. Conner made an eloquent, and often compelling argument in favour of the 1979-80 Teacher position, it would be a serious error in principle and quite inconsistent with the history of bargaining for me to fail to adopt the same settlement which the balance of Metro has accepted. Accordingly, I award a 6% increase in 1978-79 and a further 6% with the COLA provision for 1979-80. Full details are included in the Collective Agreement which forms part of this Award.

For 1980-81 I have decided to make an interim rather than final award in the amount of 6% to all members of the bargaining unit below the rank of Vice-Principal. For all others, an interim award equal to the dollar increase generated at A4 max, will be made. I have also made an interim award in the area of benefits. I will remain seized on the question of compensation (including benefits and allowances) for the 1980-81 year until there is additional relevant data generated by free collective bargaining or by other arbitration awards. I wish to make it clear that it is my express intention that this Award not impact on the other Secondary negotiations in Metro and it is for this reason I have selected the arbitrary percentage of six. Those Teachers deserve the opportunity to bargain unencumbered by my award. They should not be affected because circumstances peculiar to North York mandate the imposition of a third year. I have also made an interim award on compensation because the North York Teachers have waited so long for any increase that it is only fair that they start the 1980-81 school year with some increase in hand. Both parties consented, if I concluded that a third year should be imposed, to this procedure and to my remaining seized to deal with salary, benefits and allowances.

York Borough Secondary, 1979-80 - TEPLITSKY - pp. 5-6

In determining the dollar value to be assigned to the Maximum Category 4 position for each of the years under review, we do not find in the materials and comparisons filed any single clear indicator at to how this should be determined. Fortunately, there was almost total agreement between the parties as to what Boards would be appropriate in making comparisons of salary levels and the substantial difference between the parties rested in the fact that the Teachers focused on comparisons at the Maximum Category 4 level, whereas the materials files by the Board focused on average Teacher salaries as a reflection of a total grid structure comparison. In view of the parties practice on the fixed ratio grid, it was our conclusion that Maximum Category 4 salaries did, indeed, provide the most useful basis of comparison and that it was appropriate to look to the contiguous Boards and the surrounding Boards to which the parties had referred. It was, therefore, our approach to consider the Category 4 maximum substantively in six countiguous Boards and ten surrounding Boards, all of which had concluded contracts for the 1979-80 school year. We then consider the Category 4 maximum would be required in Peel to maintain a relative position which Peel had enjoyed in relation to these Boards in the 1978-79 school year. For the 1980-81 increase, we again looked at the information available from those contiguous and surrounding Boards and again determined what increase would be necessary to maintain the relative position of Peel from the prior two school years. We then evaluated the figures obtained by that process with the various other factors which had been referred to by the parties, such as trends in the cost of living, settlements elsewhere both in the private and public sectors and Provincial averages in the teaching area and found that the percentage increases which would be produced and the resulting salary levels were not inconsistent with any of those indicators. Based on that analysis it is our conclusion that for the school year 1979-80 the maximum Category 4 salary should be fixed at $30,800.00 and that for the school year 1980-81 the maximum Category 4 salary should be fixed at $33,100.00. The balance of the salary grids for all Teachers, Principals, Vice-Principals, Consultants and Curriculum Assistances are to be determined on the basis of the fixed ratio used by the parties which, for greater certainty, we have attached as Schedule "A" to this Award.

York County Secondary, 1979-80 - BURKETT - pp. 8-9

The Board is satisfied that in absolute terms the 1977-78 salaries paid to secondary school teachers in York County were not out of line with those paid in the "comparable" boards or generally in the province as would require special consideration. The .4% difference in the positions of the parties in respect of the quantum of the general economic increase bears out our conclusion in this regard. Data supplied by the Education Relations Commission reveals that teachers in the Durham County Board of Education negotiated a 5.5% increase (exclusive of increment) for the 1978-79 contract year. Similarly, the secondary school teachers in the

Halton, Peel, Simcoe and Scarborough Boards of Education negotiated 6% increases for the 1978-79 contract year. Cost of living allowances for the 1978-79 do not appear in any of these agreements. These are the "comparable" Boards which have been referred to by the parties. The trend which emerges, and one which this Board is prepared to recognize, is for a 6% increase (exclusive of increment) for the 1978-79 school year. In recognition of the concern expressed by the teachers over the imbalance in the grid, and having regard to the position taken by the Board in respect of equalization, the Board is prepared to allow the teachers flexibility to equalize the increment steps within an overall cost parameter to the Board of 6% over the 1977-78 grid amounts.

Peel Elementary, 1980-81 - TEPLITSKY - pp. 7-9

For the 1980-1981 contract, our task is made somewhat easier because every other school board has already settled and there are, therefore, many comparables which afford evidence of what is reasonable for that period.

The Trustees are suggesting a 9% increase for all Teachers including Vice-Principals and Principals. That would result in a salary of $32,918.00 in Category IV maximum and would reduce the differential between the Secondary Teachers in the corresponding category from $600.00 to $182.00.

The Teachers propose a salary of $33,566.00 which would give them $466.00 more than their Secondary School colleagues. No reason was suggested to support such a result.

On the other hand, narrowing the differential and gradually restoring reasonable parity with the Secondary School Teachers, a parity which had existed prior to 1974 when the Elementary Teachers distributed their increase differently from the Secondary Teachers, appears fair and consistent with the most recent history between these parties.

I note Mr. Mattice's observation in reply that a difference of $182.00 (approximately ½ of 1%) at maximum and less in the other grid cells, is experienced by the Teachers as a "canker" in their relationship with the Trustees. If it is a "canker", it should not be. The Elementary Teachers voluntarily destroyed the parity and it is not reasonable to expect that its restoration, the cost of which must be borne by the employer, should happen other than gradually.

Although a 9% increase is less than the rise in the cost of living for this period, it will generate a larger cash flow than is necessary to keep abreast from the cost of living. For these reasons, I think an award of 9% is reasonable in the circumstances and I so award to all Teacher including Vice-Principals and Principals.

With respect to the situation for 1981-1982, there are fewer settlements and thus, fewer comparables. However, as noted previously, a very important settlement in Metropolitan Toronto with the Secondary School Teachers is available. That settlement generated a $36,720.00 end rate in A-4 Max (Cat. 7, Max. equivalent). Because of the proximity of Peel to Metro and the close relationship between both communities, that settlement is entitled to great weight and will have considerable influence in the Province generally. It is not a mere coincidence, I am sure, that the Durham Elementary Teachers settled for a 9.8% increase for 1981-1982, the same percentage increase as the Metro Secondary Teachers obtained. The histroy of the relationship between the Metro Elementary Teachers and their Secondary counterparts has been that whenever the Elementary Teachers' salary has fallen behind, catch-up has been swift and sure. It is also important that our award not destroy the potential for reasonable parity with the Secondary Teachers that the Elementary Teachers seek.

After taking all of these matters into account, I have concluded that an end rate of $36,650.00 would be appropriate. This requires an 11.34% increase. Given the current rate of inflation, it is not necessary to generate 11.34% for the entire year to keep abreast. Accordingly, I have decided that a split grid should be awarded and I would award $35,222.00 effective September 1, 1981 and $35,650.00 effective January 1, 1982. For the Principals and Vice-Principals, 7% should be added effective September 1, 1981 and effective January 1, 1982, the 1980-1981 rate should be increased by 11.34%.

Kirkland Lake Secondary, 1980-81 - BURKETT - pp. 5-6

The Board also cites increases negotiated with both its custodial staff (10.7%) and secretarial staff (9.9%) for the 1980-81 school year. The Board, stating that these increases reflect an element of "catch-up", argues that the 8.61% grid increase which it has offered to its secondary school teachers is fair and reasonable when reference is had to the additional 1.3% incremental increase which will accrue within the teacher bargaining unit. The Board asks me to discount the erosion of purchasing power argument advanced by the teachers and to base my award on the relevant comparative settlements.

In an award setting the salaries of Metropolitan Toronto police officers for the 1980 calander year (See The Metropolitan Toronto Police Association and the Metropolitan Toronto Board of Commissioners of Police, January 4, 1980, unreported (Burkett) I observed that there is no single correct result in determining public sector salary levels. I commented:

> "I start with the proposition that adjudication of salary levels for public sector employees is not a science in any sense of the term. There is no mathematical formula which will produce the correct result. Indeed, there is

> no single correct result. Rather, the exercise requires the balancing of a number of criteria in an effort to achieve a result which falls somewhere within an equitable range; equitable in terms of those who must live under the result and those who must pay for it. ..."

This observation apples with equal force to the case at hand.

In my view the salaries paid by the other corridor boards to secondary school teachers remain as the primary comparison. These salaries are freely determined and relate to payment for identical professional responsibilities carried out within the same grographic area. In the absence of compelling evidence to show that the Municipality is under severe financial strain the salaries paid to Kirkland Lake secondary school teachers should be comparative, both at the maximum of category IV and throughout the grid, with those paid by the corridor boards. The settlement between the Board and its elementary teachers, while relevant, is of significantly less importance than the corridor board salaries referred to above. The same can be said of the Kirkland Lake custodial and secretarial settlements and the general pattern of settlements as reported by Labour Canada and the Ontario Ministry of Labour.

Having regard to all of the foregoing I am satisfied that an increase of 10% to all positions shown on the 1979-80 grid would produce a 1980-81 grid which is within the "equitable range".

Norfolk Secondary, 1980-81 - McKECHNIE - pp. 1-6

The parties presented written submissions and oral arguments to substantiate their positions and the approach of each party was different in terms of basic philosophy. The Teachers' primary arguments were from the point of view of; cost of living, using data showing wage and salary increases in employment outside the education sector, and geographic or other local factors. The Teachers' proposals were based on the premise that the schedule, i.e., the salary grid, had not kept pace with changes in the Consumer Price Index and it was the Teachers' objective to achieve a grid that would conclude the 1979-81 contract years with both end-rate figures and annualized figures that would keep the teachers, salaries in line with cost of living changes over the past five years. The Teachers argued that the salary grid had fallen behind cost of living beginning with the AIB experience and continuing through 1978-79.

The Teachers proposed a three-stage grid for 1979-80 derived by multiplying the 1978-79 salary gid by 6.33 percent, 7.776 percent and 10.67 percent respectively. The Teachers presented minima and maxima for each category rather than the entire grid; however, a complete grid can be calculated from the figures set forth. In 1980-81, the proposed salary grid minima and maxima were derived by multiplying the August 1980 grid figures by 7.0 percent and by 8.0 percent respectively in a two-step process the first beginning September 1, 1980 and ending December 31, 1980 and the second beginning January 1, 1981 and ending August 31, 1981.

The Board took a different approach and stated that, based on the rationale used in other awards, notably the award by Mr. Ross Kennedy in the matter of the Kent County Board of Education and OSSTF and statements made by Mr. Owen Shime in a speech to the Ontario School Trustees Council, proposals using cost of living adjustments were not appropriate in this particular dispute. Futher, the Board stated that economic arguments such as those set forth by The Honourable Mr. Charles Dubin in the award involving the secondary school teachers of metropolitan Toronto in 1975 were not helpful or appropriate given the timing of the present arbitration. Specifically, the Board stated that since only the Norfolk collective agreement remained undecided for 1979-80 and that in 1980-81 a very large percentage of secondary school collective agreements had been settled, especially those in the "southwestern" area, that the appropriate test for grid comparisons had to be the "range of reasonableness" as evidenced by settlements already in existence. Using this approach, the Board presented complete grid schedules with the following elements: for 1979-80 an increase at the maximum of category 4 of 6.3 percent over 1978-79; and for the period September 1, 1980 to January 31, 1981 an increase of 8.8 percent (over 1979-80) at the maximum of category 4 and for February 1, 1981 to August 31, 1981 an increase at the maximum of category 4 of 10.2 percent over 1979-80.

The Board of Arbitration reviewed the arguments and factual circumstances submitted by the parties and concluded that the circumstances presented to it warrant taking the following approach. The large number of settlements reached in 1980-81 and the total number, with the exception of Norfolk, completed for 1979-80 do establish ranges for comparison. In the normal course of collective negotiations it would be reasonable to expect that the Norfolk Board and its Secondary School Teachers would undoubtedly find a solution within the range of settlements. In addition, it is not appropriate to use an arbitration to attempt to provide redress for alleged deficiencies in salaries that may have occurred in the past, especially when the settlements were freely negotiated. Therefore, the Board of Arbitration, in reviewing the data and the rationale presented, is faced with the task of selecting a point within a range of comparison or attempting to determine if special conditions exist to step outside the range. No such circumstances were presented.

To determine this range, the parties assisted the Board of Arbitration with their presentation of data. Both presented a list of boards that served, in the parties' own particular view, as legitimate comparisons for Norfolk Teachers' salaries. The lists differed; however, it was possible to compile a list of common "comparison" boards that were found on the list of each party. When that exercise was completed it showed that the Norfolk teachers' salaries in the period since 1976-77 up to and including 1978-79 were found in approximately fourth place among the following set of boards: Lincoln, Waterloo, Haldimand, Brant, Norfolk, Middlesex, Oxford and Elgin. The years 1976 through 1979 were years during which the Norfolk Board and its Secondary School Teachers had freely negotiated their collective agreements. It is therefore reasonable to expect that, had the agreements for 1979-80 and 1980-81 been

freely negotiated, the placing of the Norfolk teachers' salaries within this common list would not differ appreciably from the position in the past.

The Board argued that any placement in a list of comparison boards had to include both salary schedule and cost of living adjustment. It must be noted that the COLA clause is not a matter to be decided upon by the Board of Arbitration. The COLA provision was agreed to as part of the Memorandum of Settlement terminating the strike. The Teachers argued that the COLA payment should not form a part of the decision in determining the grid since their objective was to have the grid reflect cost of living changes and thus attention should be focused on the schedule alone. The Board of Arbitration agrees that the matters brought before it deal with grid schedule and not with COLA, nonetheless the COLA is a reality and, when considering the impact of a salary settlement, the COLA factor, the amount of which is known for the 1979-80 period and could only be estimated by the parties for 1980-81, should at least be taken into account. The Board of Arbitration viewed the COLA as providing an answer to the approach taken by the teachers - that the salaries should be examined relative to cost of living changes. The position of Norfolk among the comparison boards in the past few years was therefore reviewed with the objective of establishing end rates and annualized figures such that the results with and without COLA would lie within the range of settlements.

The Board of Arbitration thus considered two aspects of the teachers' salary grid; the first was the maximum of category 4 in each of the two years and the second was the annualized figure at category 4 maximum and the position of this annualized figure among the list of comparable boards. The annualized figure is appropriate since it is the actual salary paid to teachers at category 4 maximum and annualized figures are used by the Education Relations Commission in presentation of data. Using the Teachers' proposals would result in moving the annualized figure to third position in 1979-80 and second position in 1980-81 among the "common listing" of boards. Using the Board's proposals would result in dropping the Norfolk figures to the bottom of the list of "common" Boards. The Board of Arbitration sought a figure that would place the annualized salary at maximum of category 4 of the Norfolk teachers in the fourth position of the aforementioned Boards by 1980-81 - a position maintained with some consistency over the past four or five years. In addition an "end rate" of category 4 maximum as of August 31, 1981 was sought such that this figure would also be related to figures found in the other boards since it will form the basis for future negotiations.

Canadian Forces Base Petawawa Secondary, 1980-81 - MacDOWELL - pp. 26-32

Because of its close relationship to the D.N.D. guidelines, and the Renfrew bench mark, the employer's wage position is the easiest to explain. The teachers' 1979-80 salary - grid position

plus COLA adjustment at the A-4 maximum, which the parties agree is the appropriate basis for comparison - is $32,365.00. The employer offer for 1980-81 based on the Renfrew rate is $32,976.00, or 1.9% above the existing salary schedule. The employer proposes to remove the COLA feature entirely, which if continued, would by itself yield a 7.2% salary increase (i.e. if the agreement was permitted to continue without any changes at all as it did in 1979-80, the COLA alone would produce a wage increase about four times as large as what the employer is now offering). The 1.9% wage increase is admitted to be a "token increase" designed to bring the C.F.B. Petawawa teachers into line with those of Renfrew, in accordance with the D.N.D. guidelines. Its purpose is to wipe out the historical differential in facour of the C.F.B. Petawawa teachers and remove the COLA protection which has been part of the parties' agreements since 1975 but which is now inconsistent with the current D.N.D. rules.

In order to put the employer's proposed 1.9% increase into perspective, one can refer to the data provided by the teachers in their brief:

(a) The average collective bargained salary increase for teachers in Ontario for the year 1980-81 over the previous year was 9.6%.

(b) In the fourth quarter of 1980, the increase in major collectively bargained settlements in Canada averaged 10.1%, and in the first quarter of 1981 they averaged 11.1%.

(c) The wage increase in collectively bargained settlements in Ontario for the fourth quarter of 1980 averaged 10%.

(d) The general level of wages in th embroke area rose by about 9%.

(e) The proposed increase of 1.9% is less than one fifth of the level of inflation over the same period.

(f) The increase offered is substantially less than granted to some military personnel themselves. A major in April 1981 earned 16% more than he did in October 1979; and while this comparison does not reflect the differing duties and responsibilites of military personnel, neither does it reflect the special allowances, benefits and subsidies available to them.

(g) The increase proposed by the employer is substantially less than that obtained by the Renfrew or Nipissing teachers (9% and 9.8% respectively, each based upon a "split grid").

(h) The proposed 1.9% increase follows a modest increase in the previous year resulting from the parties' agreement to let the agreement renew itself on the same terms - thereby providing a delayed wage adjustment in accordance with the COLA clause of 4% less than the level of inflation in the previous calendar year.

In summary, the employer's position, while faithful to the D.N.D. guidelines, seems entirely inconsistent with any of the other economic or collective bargaining indicators which might form the basis of a fair comparison.

The teachers' position is no easier to defend, for they propose a salary increase on the grid of 8%, in addition to maintaining the status quo on COLA - thereby insuring an additional payment of 7.2%. (Because COLA is calculated on the year ending December 31st, 1980, we know its percentage amount). In summary then, the teachers' proposal when compounded, amounts to a request for a 15% increase in teachers' income for a group who already appears to be very will paid in terms of their counterparts elsewhere. This can be compared then, to the employer's proposal of a 1.9% over all increase, and the removal of the COLA feature. Neither proposition is "within the range of reasonableness".

Having regard to the totality of the evidence (and noting once again its deficiencies,) we find it reasonable that the teachers receive a 9.6% increase in total income in contract year 1980-81, over a total income received from grid position plus COLA payment in contract year 1979-80. A teacher receiving a total income of $32,356.00 in 1979-80 would therefore receive a total income (again, including grid plus COLA portion) of $35,472.00. It is unnecessary to set out the arithmetic in detail. It suffices to say that our award if converted into the format prescribed by the parties' agreement, would represent a grid position increase of about 2.25%, to which the 7.2% COLA formula is then added. However, because of the fold-in features (except for principals) we do not have to break the award down in this way and we need only note that a teacher, in accordance with our award, is to receive a total income of 9.6% above what he received in the previous year. This increase in total income, is somewhat below that indicated in private sector settlements, but no worse than the average of what other teachers in Ontario have received, and it does not substantially alter the relative position of C.F.B. Petawawa teachers vis-a-vis their local and provincial counterparts as acceptance of either of the parties' positions would.

In arriving at this result, we have not ignored the employer's budgetary difficulties; but it is a little difficult to put the employer's budget information into a proper perspective. Obviously, teachers salaries make up an important component of the base budget, and because of declining enrolment, there has been an increase in per capita student cost. On the other hand, the increases in teacher salaries have not been excessive in relation to increases in

other cost factors (or inflation) and if the base is to be regarded as part of the D.N.D. establishment, its budget would have to be viewed in a broader governmental or departmental perspective. We have no evidence of such matters, but it would be a little surprising these days if a federal government department despite austerity was offering its employees only a 2% wage increase. In any case, we have no have no such evidence. From the employer's perspective, of course, there may well be a case for drastically reducing the relative position of teachers, but the evidence did not support it, and we do not think that an arbitration board should fundamentally alter the relationship between the parties unless there is compelling evidence that it must be done. Such issues are better left to collective bargaining. In that context, the relative economic power of the parties can be a much more important factor than such "objective" indicators of fairness as comparability. And there is nothing inconsistent or even unusual in saying that a party may be able to gain much greater concessions at the bargaining table than through interest arbitration. It must be remembered that the status quo which we are substantially preserving by our award, is one which the parties have constructed for themselves through successive rounds of free collective bargaining - including the right to strike. It is the pattern which they have fashioned for themselves, and as such deserves careful consideration and considerable weight.

Moosonee R.C.S.S., 1980-81 - STOCKTON - p. 9

Nevertheless, it is this arbitrator's opinion that, in principle at least, the Moosonee Public school teachers' level of comparison is a more valid point of comparison, than the James Bay Lowland secondary settlement. The Teachers of both the Moosonee Public board and Separate board live and work in the same community which is relatively isolated and has a population of about 1300 people. The schools in which they teach are very similar in size and facilities. Some discussion took place at the hearing as to the different levels of housing subsidization between the two boards, but the arbitrator was able to make no finding in this regard.

In determining a fair level of compensation for 1980-81, however, this arbitrator is not prepared to accept the Board's contention that parity with the public board must take place in this year. The arbitrator is mindful that the Moosonee separate teachers have given up a substanital benefit in the cost of living allowance, and that last year that allowance placed them 4% ahead of their public school counterparts. It is the arbitrator's conclusion, therefore, that for 1980-81 year the Teachers are entitled to remain ahead of the publc board to the same extent as last year. In arriving at this conclusion the range of settlements elsewhere in the Province has not been overlooked.

Kirkland Lake Secondary, 1981-82 - BARRETT - pp. 9-12

Past Arbitrators have subscribed to the "corridor theory" of comparing this School Board with surrounding Boards which are similar in geography, demography and economy. These "corridor" Boards consist of Nipissing, Timiskaming, Cochrane-Iroquois Falls, Timmins, and Kapuskasing. It appears that all of these corridor Boards, except Timmins, are suffering a similar economic decline to Kirkland Lake. All of these Boards have settled contracts for the 1981-82 school year and comparison figures are readily available. The Board offered statistics comparing salaries at minimum and maximum (in each of four categories) of their offer with all of these corridor Boards. Past salary comparisons show that Kirkland Lake salaries have been below average for the corridor since 1978-79, and we note that in each year from 1978 through '80, Kirkland Lake has paid salaries that are the second lowest in the Corridor. The Board attempted to show that at least during those three years, Kirkland Lake was rising closer to the average and that its 1981-82 salary offer would in fact bring them above average. One calculation however was left out of the tabled comparison and that is that the Nipissing Board of Education has a cost of living adjustment clause in their contract which would increase the top salaries at category IV maximum by between $620.00 to $680.00 and therefore necessitate a readjustment in the comparisons. We have therefore adjusted the Nipissing category IV maximum salary to $36,670.00 and re-calculated the corridor average for group IV maximum on that basis. The corridor average then becomes $36,738.00 for category IV maximum. The Board offer is $36,649.00 for category IV maximum.

We were persuaded by the Board argument regarding its inability to pay in these depressed economic times and we would not make an Award which would substantially improve the Teachers' salaries in relation to other corridor Boards. The Board says however that is offering a relative improvement in corridor position for Kirkland Lake at the lowest position in the corridor in the group IV maximum category. In the previous three years, Kirkland Lake has always been the second lowest in the corridor and we feel it is reasonable for Kirkland Lake to maintain its same approximate position at this time. A 12.2% increase would raise the group IV maximum salary to $36,714.00 which would make it approximately equal to Kapuskasing and higher than Nipissing. While making these comparisons we are cognizant of the fact that all of these corridor Boards have different salary grid structures and that the relativities in groups I, II and III are not necessarily consistent with group IV maximum comparisons. However we feel it is reasonable to compare group IV maximum salaries for the purpose of making an Award because approximately 60% of the Teachers are in category IV and most of those Teachers are at the maximum.

The Teachers' request for a 15.5% increase is composed of a 3% catch-up factor which they say would help them to catch-up with increases in other public sector employee groups and help restore them to their former, very high ranking position in the Province relative to other Secondary School Boards. We can see

no justification for this catch-up factor given the admittedly poor economic climate existing in Kirkland Lake and the fact that the Board is spending over grant ceilings and must raise extra funds directly from the taxpayers.

We agree with comments made by past Arbitrators that public sector employees should not be required to subsidize local taxpayers by accepting sub-standard salaries; but on the other hand, local taxpayers should not be required to improve public sector salaries out of proportion to their own economic means.

The Teachers made many references to the Consumer Price Index and the fact that Teachers' salaries have not been keeping pace with the cost of living. With the benefit of hindsight, we know that the cost of living rose approximately 12.5% in 1981 but that the rate of increase has slowed in 1982 to below 12%. This Award will probably approximate the average cost of living increase over its duration. We do not mean to say, however, that Teachers' salaries should necessarily keep pace with the cost of living but we accept the Board's argument that a very reasonable salary Award should be made in lieu of significant gains in working conditions in a time of nation-wide economic recession.

TRAITEMENTS: DIRECTEURS ET SOUS-DIRECTEURS

Kirkland Lake Secondary, 1975-76 - JOHNSTON - pp. 70-72 & 76

The Teachers contended that the following criteria must be considered: relationship between student enrollment, staff size and work load; historical salary levels; salary increases in relation to purchasing power; salary increases in relation to teachers' salary increases; and availability of resource people because of geographic location. The Teachers pointed to several factors as indicative of a high degree of responsibility and relatively high degree of challenge for its principal and vice-principals. First, of the sixteen boards of education in the province that have only one high school under their jurisdiction KLCVI is the largest. Fourteen of the sixteen are located in Northern Ontario. Their principals and vice-principals have less access to resource people more readily available in more populated parts of the province. Hence, northern principals and vice-principals must draw upon their own resources to provide leadership to a greater extent. Moreover, they lack the opportunity of their southern colleagues to meet at frequent intervals to pool resources and exchange ideas. In addition, a single school board loses the flexibility of being able to transfer surplus teachers to another high school under the same board and thus staff deployment is more difficult. In addition the problems associated with hiring a sufficient number of bilingual teachers are greater in the northern schools.

The Teachers provided statistical comparisons suggesting that there were a greater number of students and teachers and French language classes under the direction of the principal and vice-principals at KLCVI and yet they had fewer heads and assistant heads to share the load.

The Teachers pointed out that historically these positions in Kirkland Lake have carried remuneration commensurate with the highest in the province. In 1972-73 the principal's salary was the highest in the province and the vice-principal's salary third highest but the position had been eroded to a point in 1974-75 where the principal's and vice-principals' salaries were eleventh and thirteenth respectively in the province. The Teachers also pointed out that the purchasing power of the principal's and vice-principals' salaries measured against the consumer price index had declined by 5.1 percent and 2.6 percent respectively form 1972 to 1974. The Teachers also produced a chart showing that the principal's and vice-principals' salary maxima in relation to category IV maximum teachers salary declined from 147% in 1972 to 142% in 1974 for principals and from 123% in 1972 to 122% in 1974 for vice-principals.

The Board pointed out that in a single high school the principal and vice-principal had immediate and undivided access to the Superintendent of Education and the Director of Education and were in a more enviable position than their counterparts in multiple school boards where the attention of these senior consultants and officials would be more divided. The Board also submitted that the lines of communication to the Board were much more easily accessible in Kirkland Lake given the uncomplicated relationship. The Board also produced a series of comparative

figures on principals' and vice-principals' salaries elsewhere in the province contending that the Board's offer compared very favorably with these others.

Considering all of this information and the factors considered in connection with basic salary schedule earlier, I conclude that an award on this item somewhat higher than the Board's offer but not as substantial as the Teachers request is appropriate. I conclude that there is considerable force to the Teachers' argument that there are unique leadership requirements placed upon the principal and vice-principals at KLCVI and that the significance of high quality leadership from these individuals is greater in that geographical setting than most others in the province of Ontario. I conclude, too, that it is appropriate to take some steps to restore the salaries paid to these officials in the Kirkland Lake setting to their earlier position amongst the highest in the province, although I do not believe that a placement just under the Nipissing level, which may be the highest in the province, is appropriate. Moreover, given my earlier decision to award the Board offer on the general salary grid I believe it is inappropriate that the historical relationship between the teachers' category IV maximum salary and principals' and vice-principals' salaries be unduly disturbed. Bearing in mind the salaries paid to principals and vice-principals in the geographically most proximate areas I conclude that the appropriate award is one that adds $500 to the Board's offer for minimum and maximum for principal's salary in each of 1975-76 and $400 to the Board's offer for minimum and maximum for vice-principals' salaries in each of 1975-76 and 1976-77.

Durham Region R.C.S.S., 1976-77 - KENNEDY - p. 7

The general comments previously made with respect to Teachers' salaries are applicable also to determining the level for principals and vice-principals' salaries. The figures provided to the Board of Arbitration would indicate, however, that on the basis of comparability, there is a wider gap between the salaries of this group and comparable positions in Metropolitan Toronto and within the Durham Public School System. The proposal of each party with respect to principals' salary provides a three-tier structure based on the number of pupils in the school with three annual experience increments. The Board proposes an eight percent increase over the amounts payable under the prior Collective Agreement; whereas the Teachers request a ten percent increase. The Teachers stressed in argument that with respect to the smallest of the three sizes, the increase in salary for assuming the responsibility of the position of principal was inadequate in comparison to the category maximums on the salary grid and that in some circumstances this could be inequitable. It would seem however that that is more a criticism of the basic structure being used by the parties in defining the various principals' salary levels and has not been created as a result

of the absolute salary levels themselves. If any inequity exists in this area, it could be corrected more effectively by an alteration of the three-tier structure. Since no argument or request was made for such re-structuring, the basis of percentage increase as proposed by the parties will be used and the rate of increase will be the same as in the case of the Teachers, namely, ten percent.

Huron Secondary, 1977-78 - JOHNSTON - pp. 26-28

The Teachers submitted that the equal percentage increase approach was essential in determining principals' and vice-principals' salaries so that the monetary relationship between the vice-principal and principal position and that of teachers be maintained and that principals and vice-principals not suffer a decrease in relative purchasing power. The Teachers argued that as a simple matter of equity principals and vice-principals who had developed a living standard related to their income should not have to reduce that living standard relative to other employees in the educational system simply because they happen to be more highly paid. In the Teachers' view the additional payments represented the additional workloads and increased responsibilities of senior administrators and should be maintained so that their net income position was maintained. The Teachers also submitted that prior to the 1977-78 agreement principal and vice-principal salaries were calculated as a percentage of the category for a maximum salary on the grid so that the school administrators received salary increases in direct relation to the teachers' salary increases. The implementation of a separate grid in 1977-78 should not destroy this practice.

The Board produced information which showed that the average salary for principals and vice-principals in a comparison with the eleven immediately adjacent Boards placed Huron County principals secon' best and only slightly below the top Board, London, (a subst ntial urban centre) with a difference of $33,730 as opposed to $33,754. Huron principals and vice-principals were also second best when total compensation was considered with Huron at $32,211 and London at $34,375. By contrast the comparison of teacher compensation for 1977-78 for the same twelve counties showed Huron seventh from the bottom on a grid scatter comparison and eighth from the bottom on a total compensation pattern. Roughly the same pattern was established on a comparison of average compensation per certified teacher. Huron teachers average compensation was eighth from the bottom in a fourteen neighbouring board comparison including principals and vice-principals but seventh from the bottom comparing principals and vice-principals only.

It is apparent from this comparison that principals and vice-principals are significantly better off with respect to their relationship to teachers' salaries when compared with related counties. Moreover recent salary trends show some indication of a tilt in favour of lower paid individuals. For

these reasons I conclude that the principals' and vice-principals' increases and the slight savings effected by avoiding the Teachers' proposal of an equal percentage increase across the board should support a slightly higher percentage increase for the teachers, than otherwise might be the case. This I have already taken into account in the teachers salary increase set out earlier. However, I believe the proposal of the Board imposes too great a sacrifice on the principals and vice-principals and would have the effect of bringing their historic position at or near the top in the twelve or thirteen surrounding counties significantly down. I believe a 5% increase to principals' and vice-principals' salaries is a reasonable balance and I so award.

Renfrew Secondary, 1977-78 - SWAN - pp. 10-11

The positions of the parties diverge considerably over the issue of salaries for Principals and Vice-Principals. The Teachers would apply the general salary increase to each position on the administrative grid, while the Board would increase these salaries by a flat $1000 at each position. The reason for divergence is clear when comparable salaries for other educational jurisdictions, even those advanced by the Teachers, are examined. For reasons about which we can only speculate, Principals and Vice-Principals in Renfrew County have achieved salary levels which are extremely high in proportion to administrative salaries in other areas and in relation to the teacher salary grid in Renfrew. The Teachers, quite naturally, wish to preserve this favoured position; the Board wishes to bring the administrative salaries back into line.

We have not been informed of any specific reasons for the high administrative salaries, but we are of the view, in light of the salaries paid elsewhere, that these salaries are anomalous. On the other hand, the salary levels now being paid were freely concluded between the present parties in negotiations for the 1976-77 agreement, and so they must have been at least temporarily acceptable to both. Moreover, those salary levels have established certain expectations, and precipitate action to resolve the anomalies could produce hardship in individual cases. We therefore do not think that the administrative salaries should be adjusted quite as rapidly as the Board's proposal, although we agree that some downward adjustment is necessary.

Halton Secondary, 1979-80 - TEPLITSKY - pp. 5-6

In my opinion, it would not be appropriate to award the same percentage increase to Principals as to Teachers for two reasons. First, the average Principal's salary in the Golden Horseshoe for 1979-1980 was $41,503.00. An increase of 7% would result in a salary of $42,393.00, some $863.00 or 2% above the average,

whereas in 1978-1979, Principals in Halton were only .2% above the average for the region. To maintain their relative position requires an increase of $2,000.00.

Second, although the Teachers presented a forceful argument in support of the Principals and Vice-Principals receiving a percentage increase similar to that of other Teachers, the fact remains that increases for Principals and Vice-Principals in the Golden Horseshoe in 1979-1980 have on average been approximately 4.7% whereas the average increase for Teachers on the grid has been much higher. Norms established in free collective bargaining should ordinarily be followed by arbitrators. Accordingly, I have added $2,000.00 to each step in the Principals' grid. Based on the evidence adduced by the Teachers, a shortening of the Principal's grid is necessary and will be implemented in 1980-1981.

The situation of the Vice-Principals is somewhat different. First, their maximum salary is 2% below the average of the Golden Horseshoe and their grid is longer than the average. At minimum, they are some 4% below the average. It would appear to me that compression of their grid is necessary, and that will be instituted for the 1980-1981 year. That will relieve to some extent the problem at the entry level of their grid. As all of the catch-up cannot be accommodated in one round of bargaining, I have made some adjustment in both years.

Peel Secondary, 1979-80 - KENNEDY - pp. 6-7

The Teachers propose a modification to the Grid Structure for Principals, Vice-Principals, etc., which would put the minimum Principal grid at 1.30 and the minimum Vice-Principal grid at 1.15. The subsequent steps are, of course, also modified. The request is justified on the basis that during the period of anti-inflation controls the maximum dollar value increases permitted by the regulations resulted in a reduction of the grid factors at those positions. The argument is, therefore, that the Principals, Vice-Principals, Co-ordindators and Curriculum Assistants have thereby fallen behind in their relative positions and that the relationship should be corrected at this time. We are not prepared to accept the Teacher argument in this regard. The Grid factors were, of course, negotiated between the parties and, of necessity, reflected the economic pressures and controls in force at the time of negotiation, which factors applied universally to all negotiations within the teaching area. Accordingly, in support of a request for a change in the negotiated Grid Structure we do not consider it sufficient that the Teachers simply refer to the economic facts surrounding negotiations during that period of time. Rather, such a request must be justified on the basis of an analysis of the salaries which now result from the negotiated Grid and salaries being paid elsewhere for comparable positions. The materials provided by the parties do not persuade us that the salaries for these positions that will result from this Award are in any way out of line based on the traditional comparisons and the request is, therefore, denied.

York County Secondary, 1979-80 - BURKETT - pp. 10-11

The Board is aware that in secondary school teacher negotiations generally, principals and vice-principals are not treated in a uniform fashion. While in many cases they receive the same percentage increase as is applied to the teacher grid, as the teachers argue should happen in this case, in may other cases the principal and vice-principal grids are increased by a fixed dollar amount usually equal to the same dollar increase as generated at the maximum of category 4 on the teachers' grid. There is no magic in maintaining the percentage differential between the category 4 maximum salary and the vice-principal's entry level salary as is argued by the teachers and similarly, there is no magic in maintaing the dollar differential as is implicit in the Board's proposal. The Board sees as its parameters the maintenance of the dollar differential between the category 4 maximum teacher and the entry level vice-principal (which requires an award of $1,700 to that level) and the 1979-80 maximum principal's salary in the Metropolitan Toronto Boards of $41,503. This Board is not prepared to increase the maximum principal's salary to a level which would exceed the $41,503 paid in Metropolitan Toronto for 1979-80, as would result from a 6% across the Board increase as urged by the teachers. The parties themselves agreed to a 1978-79 York County principals' grid which established a $460 per year differential in favour of the Toronto principals. Working within these parameters the Board sees a $1,700 increase to the minimum vice-principal level with the application of the percentage increase thus generated at the level to the remainder of the principal and vice-principal salary grids as equitable. The result strikes a middle ground between the two positions put to the Board, neither of which is compelling, and at the same time narrows the differential between the maximum salary paid to a York County principal and that paid to a Metropolitan Toronto principal to approximately $53 per year exclusive of whatever cost of living allowance is paid to the Toronto principal in 1979-80.

Norfolk Secondary, 1980-81 - McKECHNIE - pp 7-8

The data presented by both parties are similar in the matter of principals and vice-principals' salaries although the arguments differ. That is, the teachers argue that principals and vice-principals have been losing with respect to cost of living and in addition argue that the differential between principals' salaries and the maximum of category 4 has been shrinking over the past few years and the trend should be reversed. The Board argues comparability and states that among the "surrounding" boards the Norfolk offer is in fact comparable and should therefore be accepted.

Both parties agree that there has been a relationship between the principals and vice-principals' salaries and the maximum of category 4 although both also agree that during collective negotiations this technique has <u>not</u> been used as a means of calculating the salary levels of principals and vice-

principals. The parties also agree that the differential is decreasing. The figures presented by the Board show that the ratio of the principals' salaries to the maximum of category 4 has been an average of 1.37 for 1979-80 and 1.36 for 1980-81 for the Boards in the "southwest" area of the province. The teachers do not dispute these ratios, however, they feel that the ratio should be larger and wish to move to a ratio of 1.49 by the end of 1980-81. The data presented by the Board indicate that over the past three or four years, the ratio in the southwest area has been shrinking and no opposing evidence was introduced to suggest a return to some higher figure. With respect to Vice-Principals, the situation regarding declining ratios is the same as in the case of Principals although the ratio, as presented by the Teachers, is 1.21 in 1979-80 and 1980-81.

The Board of Arbitration applied the ratios quoted since both parties agreed that these ratios are in existence and neither party presented evidence of why the ratio should in fact change. As a result, the Board of Arbitration awards the following schedules for 1979-80 and 1980-81 for principals and vice-principals respectively.

Kirkland Lake Secondary, 1981-82 - BARRETT - pp. 24-26

In the existing Agreement the various positions of responsibility as defined by Board policy have been assigned a "factor" value which then determines the salary premium for those positions of responsibility. The concept of "Factor 1" was first introduced by the Board in 1974-75 through a policy entitled Secondary School Organization. This policy defined the positions of responsibility, assigned a factor value to each, and stated that "the responsibility 'Factor 1' will be a matter for salary negotiations". Since its inception the value of Factor 1 has been a matter for arbitration in five of seven years.

The Teachers now propose wide-sweeping changes in this Factor System. They propose first, to peg the value of Factor 1 as 4% of category IV maximum. They then go on to propose that this factoring system be applied not only to positions of responsibility but to salaries of principals, vice-principals and payments for extra degree allowances. This would have the effect of indexing all of these extra allowances to the salary grid.

The Board offers a $50.00 increase in the Factor 1 value and offers principal and vice-principal salary increases of 12%; that is, the same increase as on the salary grid.

A distinction must be made in this contract between the principal of K.L.C.V.I. which has a staff of 66.5 teachers and E.S.J.V., the new French school, which has a staff of only 12 teachers. Both parties deem it appropriate that the principal of K.L.C.V.I. should earn more than the principal of E.S.J.V. to

give recognition to the substantially more onerous responsibilities of the principal of the larger school. Both parties are also agreed that the principal's salary for E.S.J.V. should be at a position mid-way between the principal's and vice-principal's salaries at K.L.C.V.I., and we award that position for the principal of E.S.J.V.

We are not prepared to revamp the factoring system in this arbitrated Agreement because we are not persuaded that these extra allowances should necessarily be indexed to the salary grid. As we have already awarded that the salary increase on the grid shall be 12.2%, we are prepared to award that principal and vice-principal's salaries be increased by the same amount, to keep their increases in line.

ALLOCATIONS: CHERTE DE LA VIE

Metropolitan Toronto Secondary, 1975-76 - DUBIN - pp.43-47

The Boards do not propose a cost-of-living allowance for the first year of the contract, and submitted that the anticipated increase in the cost of living in the first year is reflected in the new salary scales proposed by them. They do propose a cost-of-living allowance for the second year of the contract which is broken down in two distinct time periods as follows:

(a) for the period July 1, 1976 - December 31, 1976, any increase in the Consumer Price Index (Toronto) above 6 per cent will be folded into the September 1976 salary scales retroactively;

(b) for the period January 1, 1977 to June 30, 1977, the monthly salary of all teachers will be increased, proportionate to the corresponding monthly increase in the Consumer Price Index (Toronto); On August 31, 1977, the salary scales shall be adjusted by the percentage increase of the CPI between December 1976 and June 1977.

The teachers are seeking a fully compensating cost-of-living allowance for both years and submitted that that cost-of-living allowance be based on twelve months. It is a common feature of both proposals that whatever cost-of-living allowance is granted, the percentage increase in the cost of living is applied to the salary of the teachers.

By applying the percentage increase in the CPI against the salary, those in the higher salary brackets receive more than those in the lower salary brackets. In my opinion, it is an inaccurate reflection of the cost of living to apply it in this way. The impact of the increased cost of living is felt most by those who earn less. The principle that both parties have adopted is to give the greater amount to those who earn most.

The parties have specifically agreed that whatever cost-of-living allowance is granted, it is to be "folded in". Thus, assuming a teacher was being paid on the basis of a salary of $20,000 a year and the CPI rose by 12% in that year, in addition to receiving the cost-of-living allowance during the year, that teacher would have his salary scale adjusted at the end of the year by increasing it by 12%, so that at the end of the year that teacher's salary scale would become $22,400. It is then said that the salary of $22,400 becomes the base for future negotiations.

It is understandable that a cost-of-living allowance may be negotiated in ensuing years, but, in my opinion, there is no logic in "folding in" the previous percentage rise in the cost of living to make it the new salary base against which future increases should be applied. The long term application of such a principle can, in my view, pose serious economic threats to the total cost of education in this province. It would dramatically affect the future obligations for pensions, would increase the cost of such items as accumulated sick leave on retirement, and would distort the true percentage

increases granted to teachers in the future. It spreads the differential between the lower salaried school teachers and the higher salaried school teachers which could only lead to disaffection on the part of those in the lower salary scales. It is further to be observed that there is no provision for a de-escalation clause. Rather than treating the salary scale as "folded in" as forming the base against which future percentage increases should be applied, the amount "folded in" should be regarded as an increase for the ensuing year, and I would hope that both parties would reconsider in future the advisability of continuing this practice of "folding in" since I am not satisfied that its full impact has been given sufficient consideration.

I have concluded that there is no justification for a cost-of-living allowance for the first year of the contract, having regard to the substantial increases which are being proposed, and since the teachers receive their total salary within a ten-month period, I think the cost-of-living allowance should be determined on that basis. But for the agreement of the parties that the cost-of-living allowance is to be applied on a percentage basis against salary and is to be "folded in", I would not have awarded a cost-of-living allowance on either of such premises. But I have no jurisdiction to alter the principles upon which both parties have specifically agreed that the cost-of-living allowance is to be applied. Under those circumstances, I have decided that the cost-of-living allowance, as submitted by the Boards, should be given effect to.

Kent Secondary, 1975-76 - *O'SHEA - pp.8-9*

However, the fact that our award is made at this point in time when the Collective Agreement will only have less than 3 months to run before it terminates, leaves little scope for speculation as to the amount of increase in the cost of living which the parties would have had to consider if the Collective Agreement had been settled by negotiation 10 months ago. It is noted that the Teachers have requested a cost of living allowance based on an 8% trigger. The 8% trigger is clear recognition that the Teachers have based their proposals for salary increases on the fact that their salary proposals anticipated a cost of living increase during the year of the Collective Agreement of up to 8% since the formula for adjusting for additional increases in the cost of living would not be activated until the 8% increase is exceeded. There can be little doubt that when parties negotiate long term contracts, a formula for adjusting for excessive increases in the cost of living is both reasonable and advisable since it removes an unknown factor from the area of speculation and therefore permits relief against excessive costs of living increases.

However, in contracts of short duration and in particular a contract which is to be settled at a time when 2 or 3 months of its duration are left, there is no real uncertainty about increases in the cost of living since the experience of

the previous 9 or 10 months has removed such uncertainty. It therefore follows that there is no reasonable justification for providing a cost of living formula in this matter, since, for all practical purposes, the actual increase in the cost of living is known and therefore can be directly incorporated into the salary adjustment at this time.

Windsor Secondary, 1975-76 - FERGUSON - pp.12-15

The cost of living provisions as contained in the 1975 agreement were negotiated by the parties at a time when mediation proceedings were conducted after a strike. However, the Board granted the exact same clauses to the elementary teachers about five months later. The Board extended to these teachers the very terms which they are now seeking to remove from the secondary school teachers. There is a suggestion that during the course of negotiations prior to arbitration the Board offered the provisions which it now seeks to remove from the collective agreement, but that at later stages in the negotiations the Board wanted to suspend the monthly allowance for COLA for eight months, permit the fold-in at the expiry date of the agreement.

In dealing with the dispute over the cost of living allowance, it is appropriate to refer further to some of the comments made by Mr. Justice Charles Dubin. When dealing with the question of fold-in of a cost of living allowance in the Metropolitan Toronto situation, His Lordship expressed the view that by applying the percentage increase in the C.P.I. against salary, the persons in the higher salary brackets must, of course, receive more than those in the lower salary brackets. In His Lordship's opinion that constituted an incaccurate reflection of the cost of living by applying it in that manner because the impact of the cost of living is felt most by those who earn less. It was the opinion of His Lordship that there was no logic in folding in the previous percentage rise in the cost of living so as to make a new salary base against which furure increases should be applied. Rather than treating the salary scale as "folded in" as forming the base on which future percentage increases should be applied, the amount folded in should be regarded as an increase for the ensuing year. His Lordship concluded in the Metropolitan Toronto case, that there was no justification for a cost of living allowance for the first year of the contract, having regard to the substantial increases which are being proposed. But for the agreement of the parties that the cost of living allowance is to be applied on a percentage basis against salary and is to be "folded in ", His Lordship would not have awarded a cost of living allowance on either of such premises. However, His Lordship points out that he had no jurisdiction to alter the principles upon which both parties have specifically agreed that the cost of living allowance is to be applied.

It is stated by the Board that there are a number of teacher agreements which now contain provisions for cost of living allowance. It would appear that there are six other agreements covering teachers which follow the basic formula adopted by

the Windsor Board in the 1975 settlement. The Board is here attempting to "negotiate down" and as the report of the Fact Finder who was appointed to deal with the dispute between the parties before me stated, "The Board finds itself in the unenviable position of attempting to bargain down from the present collective agreement".

There is no doubt that one must be concerned about the long range economic effect of a continued application of the principle of folding in cost of living allowances, particularly when there is no provision for a "de-escalation" clause. While I must be mindful of these consequences which could result from continuation of the present formula which permits creation of a new salary base against which future increases will be negotiated, and which appears to create a situation where there is a pyramiding of COLA, the fact remains that the formula which was adopted by the parties in 1975 for secondary school teachers was precisely repeated for the purpose of negotiating the agreement with the elementary teachers. Obviously the Board considers that it "bought" a faulty formula when it settled with the secondary teachers after the "heat" of a previous strike. However, there is no satisfactory answer as to why the same Board "bought" an identical proposition when dealing with elementary teachers five months later when no "heat" existed. If the Board accepts the principle of a COLA clause as confirmed by the content of its latest proposal, and if the Board has previously confirmed its acceptance of a fold-in for COLA then, in my respectful opinion, there is no evidence before me which would now justify a departure from the formula which provides a monthly COLA allowance and a fold-in. However, one must emphasize that by accepting the continuation of this policy, one must reassess the positions of the parties on over-all wage adjustments.

In my respectful opinion there is no justification to award something else than that which is being now enjoyed by the elementary school teachers. To award to the secondary school teachers something else than presently exists with respect to COLA for the elementary teachers would be destructive of the morale of the secondary school teachers. If I rejected the proposal of the Federation for continuation of the monthly COLA allowance and continuation of the process for a fold-in, I would be contributing to further deterioration in the current relationship between the Board and its secondary school teachers.

Ottawa Secondary, 1976-77 - *TEPLITSKY - pp.3-7*

The teachers ask that the full percentage increase in the CPI between July 1976 and July 1977 be folded in. The Board's offer is that the amount actually received in COLA payments by a teacher at A4-10 on the grid be folded in at each level. For teachers at A4-10 this translates to a fold-in of approximately 3.8%. The fold-in produces significantly higher increases for those who have not reached maximum, for example, 6.57% at A4-0. The respective submissions differ in 2 respects. Firstly, the

amount folded in by applying the same percentage to each grid position produces a different fold-in for each level, whereas the Board's position results in the same amount folded in at each level of the grid. Secondly, the Board's position generates less income for the teachers at each level of the grid.

The teacher's argument simply put is that they are entitled as a minimum to protect their salaries against the ravages of inflation. In this contract, they are not seeking anything beyond such minimal protection.

The Board on the other hand contends that its offer viewed in the context of the 2-year package is adequate to provide protection against inflation; that salaries are too high viewed in the light of what other Boards are paying and what the elementary teachers in A1-2, 3 and 4 are receiving and further that the cost to the taxpayer is excessive.

Although in principle we agree that a teacher is entitled to receive protection against inflation, which is the issue in this arbitration, modifying circumstances must also be acknowledged. In the private sector, for example, the absence of profits, inability to pay and market conditions are all relevant. Receipt of other benefits, either in the form of fringe benefits or improved working conditions which are an increased cost to the employer must also be accounted for. The task of setting appropriate salaries is not a mechanical function and the salary produced by the application of the formula must be fair and reasonable. If it produces a base grid which is too high, then it may be because the previous grid against which the increase in the cost of living is applied was also too high. By too high, we do not in any way mean to suggest that the teacher's labour is not of great value. What is apposite here, however, is to determine what others receive for the same work with the same qualifications throughout the Province. Employers resist, and rightfully so, paying significantly more for the same job performed by a person of the same qualifications than are other employers throughout the Province. Exact equivalence of earnings cannot be achieved but marked differences are unacceptable. It is this last factor which we think has application in this situation.

We turn then to consider the appropriateness of the base against which the fold-in is to be applied. The grid at September 1, 1976 for A4-10 was $25,455.00. In addition the teachers will receive approximately $1,000.00 in COLA payments during the 1976-1977 year, making total earnings of approximately $26,455.00. Hamilton teachers, for example, earned $25,380.00 during the same period and London teachers, $24,510.00. The maximum grid for that year was earned by Carleton teachers of $26,655.00 but this sum was only earned after January 1, 1977. From September to December, 1976, the grid was $24,795.00

We include a copy of table 3.2 in a document prepared by the Education Relations Commission entitled 1976-77 Teacher/ Board Collective Agreements A Provincial Overview which sets

in tabular form the distribution of grids. The Ottawa grid appears to have been the third highest in the Province before COLA payments are considered. After these are included their earnings were the second highest in the Province.

If effect were given to the teacher's position A4 maximum for 1977-1978 on the grid would be $27,491.00. Assuming inflation of 8% during the year COLA payments would be generated of approximately $1,100.00 bringing earnings to almost $28,600.00. This would prove to be, given the assumption we have made with respect to CPI, the highest earnings in the Province. A review of agreements filed to date with the Education Relations Commission reveals grids which gererally speaking reflect salaries of between $25,000.00 and $27,000.00 at A4-10 for the 1977-1978 year including COLA payments.

The Board has also argued that parity should be achieved between the secondary and elementary school teachers in categories A1-A4 inclusive. Their offer, it is submitted by them, achieves such parity. In fact it results in the elementary school teachers receiving marginally more at each level than the secondary teachers do. We agree that parity is highly desirable, particularly within one school district, whenever qualifications, job function and responsibility are the same. Evidence was adduced that qualifications for A3 and A4 are higher at the secondary level than at elementary, whereas A1 and A2 are the same for both panels. We accept this evidence. Fortunately, we need not attempt to quantify what the difference should be for this disparity of qualifications nor do we need to enter the debate on whether elementary teaching or secondary teaching is more or less difficult. It is sufficient to recognize that the disparity has existed for several years in favour of the secondary panel and was achieved as a result of collective bargaining. In any event this award tends to narrow the disparity.

Other arbitrators have concluded, as was argued in this case, that the cost to the taxpayer of employee demands is relevant. We are at a loss to assess how we might give proper effect to that factor. If employees in the public sector are not to subsidize the community, a principle accepted by the Ottawa Board, then cost to the taxpayer is not a relevant factor in setting salary, rather it is the consequence of setting an appropriate salary.

In approaching the question of fold-in, we have taken into account that the cost of living factor is the only basis suggested for increment. No adjustment for increases in fringe benefits has been made which are in any event nominal, or for improved working conditions, because the evidence discloses no increased cost to the Board. We have decided that a fold-in of 6% at each grid level will produce a basic grid which with COLA payments will provide a fair salary and one which is closely comparable to Carleton. It would be unfair to fold-in less because any disparity in salary was created over a number of years and was the result of the bargaining process. These gains which the teachers have obtained in Ottawa should not be adjusted during one contract period.

In determining that the fold-in should be on a percentage basis, thereby producing greater payments to teachers at maximum than below maximum, we have not been unmindful of Mr. Justice Dubin's remarks in the Metropolitan Toronto School Board arbitration. He stated at page 45 of his Award:

> "By applying the percentage increase in the CPI against the salary, those in the higher salary brackets receive more than those in the lower salary brackets. In my opinion, it is not an accurate reflection of the cost of living to apply it in this way. The impact of the increased cost of living is felt most by those who earn less. The principle that both parties have adopted is to give the greater amount to those who earn most."

He continued in a similar vein in considering the effect of the fold-in as follows:

> "It spreads the differential between the lower salaried school teachers and the higher salaried school teachers which could only lead to disaffection on the part of those in the lower salary scale."

We have given a great deal of thought to those comments and find ourselves unable to agree with them in their entirety. We are not satisfied that the impact of the cost of living is necessarily less on persons earning more money. Other factors must be weighed, for example, the extent of individual responsibilities, including the size of one's family, whether a spouse is also contributing to the family income, and other financial obligations, etc. It is also not clear to us that persons earning higher sums are not entitled to have the benefits of many years of service equally protected. In addressing the issue of disaffection, it should be pointed out that the amount folded in does not affect the number of years it takes a teacher to reach maximum, a category in which almost 2/3 of the Ottawa teachers are included. Therefore, we have concluded that the teachers' position that the fold-in should be on a percentage basis is fair and appropriate.

Norfolk Secondary, 1978-79 - *WEATHERILL - pp.4-10*

The criterion to be applied in resolving the issue before me is whether the inclusion of the cost-of-living clause is "fair and reasonable" and, especially whether it is fair and reasonable having regard to the salary levels and other benefits enjoyed by teachers in neighbouring communities. The making of the appropriate comparisons is not, however, a simple mechanical process, as there are a number of variables to be considered, inluding the analysis of the teaching force in terms of salary categories, and the historical relationship of the rates. In the instant case, the Federation relies as well on the particular history of these employees with respect to the control or reduction of their salaries and benefits by the Anti-Inflation

Board. In addition to this, there are general considerations relating to the propriety of cost-of-living clauses to be taken into account.

To deal with the last point first, I am in general agreement with the statement cited by the employer to the effect that it would be wrong to expect that each and every year wage settlements or awards would automatically and completely protect employees against increases in the cost of living. This is true both with respect to the negotiation of general salary icreases and with respect to the negotiation of a cost-of-living clause as such. I am also in agreement with the view that, as a general matter, while there may be ample justification for the inclusion of a cost-of-living allowance clause in a long-term contract, short-term contracts (such as the one before me) are a very different matter. Thus, Mr. O'Shea, in the Kent County case, stated as follows:

> However, in contracts of short duration and in particular a contract which is to be settled at a time when only 2 or 3 months of its duration are left, there is no real uncertainty about increases in the cost of living since the experience of the previous 9 or 10 months has removed such uncertainty. It therefore follows that there is no reasonable justification for providing a cost of living formula in this matter since, for all practical purposes, the actual increase in the cost of living is known and therefore can be directly incorporated into the salary adjustment at this time.

While I agree with that statement, it must be noted that in the instant case there is no question of incorporating any known increase in the cost of living into the salary adjustment, because I am not asked to make any salary adjustment and would have no jurisdiction to do so. Rather, I am faced with a situation in which the parties, having agreed to the inclusion of a cost-of-living clause in a previous one-year agreement and having resolved all other issues, including the salary issue, have left the inclusion or exclusion of that clause in their new agreement (which, at the time of the hearing, was in its eighth month of existence) to be decided by arbitration on an "in-or-out" basis.

The nature of the proposed clause is of course also a factor to be considered. Here, cost-of-living allowance payments would be "triggered" only where the cost of living increases by an amount in excess of eight per cent of the index figure used as a base (the index at about the time of negotiation). The allowance is then in respect of further increases in the cost of living. A clause of that sort does not give employees complete protection against inflation, but rather offers a measure of protection against "excessive" inflation. It is a risk which is shared, not one which is passed on, and in my view a clause of that sort can much more readily be accepted as reasonable than one which would provide "complete" protection against inflation.

A cost-of-living clause was first negotiated between the parties in their 1975-76 collective agreement. That clause was not of the type now in issue, but provided rather for a specified payment for each one per cent. increase in the Consumer Price Index beyond the base point. That collective agreement was reviewed by the Anti-Inflation Board, and in the "roll-back" imposed by that board, the employees in effect lost the benefit of their bargain for a cost-of-living clause. In the next collective agreement between the parties the cost-of-living clause was dropped. A salary increase was negotiated, apparently within the anti-inflation guidelines.

In the 1977-78 collective agreement, the cost-of-living clause which is now in issue was negotiated and agreed to. That agreement too, ran ahead of the anti-inflation guidelines, and the roll-back (not as drastic as on the previous occasion) did result in a partial loss to the employees of the cost-of-living allowance benefit for which they had bargained. In the negotiations for the current agreement, the salary increase (considered as the overall average increase for all categories) is in the order of 6.03 per cent, according to the material before me. This does not take into account the value of certain other increased benefits which were negotiated. I was not presented with facts which would permit any sort of informed comparison of this increase with those arrived at in neighbouring or comparable communities. Taken by itself, a salary increase of that order does not appear to me to lend any particular support to either side in the matter now before me.

The same conclusion - or lack of conclusion - appears from a consideration of the average salary rates provided for the various categories of teachers in comparable communities. It would only be if some relatively striking anomaly were to appear that any very reliable conclusion could be drawn. No great anomalies appear from a consideration of the salary rates in adjoining counties (in one of which teachers were on strike at the time of the hearing), and in any event the average figures will be a function, inter alia, of the experience of teachers in each category. That the teachers in Norfolk are, to a large extent, at the experienced end of the scale, may serve to show that the comparison of average salaries is misleading, but no firm conclusion on this point is possible on the material before me.

A final matter which may be considered relates to the bargaining history of the particular agreement now in effect. A Fact Finder was appointed pursuant to The School Boards and Teachers Collective Negotiations Act, 1975. In his report, the Fact Finder noted that "Each party is attempting to effect more revisions than are necessary or desirable in a one year collective agreement, particulary where part of the year has already passed". He recommended that a number of items which had been in the previous collective agreement, but which were the subject of negotiations, be left unchanged. The cost-of-living allowance provision was among these. I do not know the extent to which

the parties may have been guided by those recommendations, which at that stage of events may be considered to have formed a "package". Now, of course, the package is complete, save for the matter of the inclusion of this one item.

A review of the foregoing considerations suggests that some weigh in favour of, and some against, the retention of the cost-of-living clause in the collective agreement. I do not consider that, on balance, either disposition of the matter can be said to be dictated by any sort of logical certainty, nor is either clearly unfair or unreasonable. It is my own conclusion, having regard to all of the circumstances, including most notably the experience which the employees have had in losing the benefits of negotiated improvements, and the "risk-sharing" nature of the cost-of-living clause in its present form, that the provision in question should be included in the current collective agreement.

It is accordingly my award that article XVII - Cost of Living Allowance, as written in the 1977-78 Agreement between the parties, be included in the current Agreement save only that where, in the 1977-78 Agreement the date "1977" appears, that shall be altered to read "1978" and where "1978" appears, that shall be altered to read "1979".

Peel Secondary, 1979-80 - *KENNEDY - pp.9-10*

For the school year 1980/81 the Teachers request a lump sum cost of living payment to be paid at the end of the school year and to be rolled into the Grid to set the basis for negotiating the 1981/82 Collective Agreement. The cost of living payment requested would have a trigger at 9% and would be based on a comparison of the Consumer Price Index as it may be for May of 1981 in comparison to the comparable index for May 1980. In support of this claim the Teachers refer to the problems that can be engendered by runaway inflation in the context of a two-year agreement and, further, make reference to the number of such two-year Collective Agreements that do, in fact, include a COLA clause. It is our view that such a clause is inappropriate in the context of this Arbitration. While the Collective Agreement which will result from this Arbitration is, indeed, a two-year Agreement the first year thereof has, for all intents and purposes, been completed. Accordingly, in evaluating the potential threat of inflation we are, in fact, only dealing with a one-year period. The Teachers placed significant reliance on the Education Relations Commission statistics with respect to 1980/81 Collective Agreements and the percentage of them containing a COLA provision. Nominally, this comparison would indicate a significant trend to including COLA provisions, but in context, those statistics are very misleading. The number of 1980/81 Agreements which have been settled is relatively small in comparison with the total number of contracts in the Province and, further, a number of those were, in fact, two-year Agreements settled much earlier in the school year than the Agreement with which we are concerned. Accordingly, those statistics do distort the extent of any trend towards the inclusion of COLA provisions. This request is, therefore, denied.

York County Secondary, 1979-80 - BURKETT - p.9

The cost of living allowance clause proposed by the teachers, as described in paragraph 6 herein, is a "running" type clause as appears in only one other secondary school agreement in the Province of Ontario. None of the "comparable" Boards are bound by cost of living clauses of any type in 1978-79 and Scarborough, the only one of the "comparable" Boards which has settled for the 1979-80 contract year is bound by a clause identical to that proposed by the Board for the second year of its agreement (1979-80). The trend, as referred to in paragraph 6 herein is away from cost of living clauses in secondary school collective agreements. Having regard to the lack of precedent and to the awarding of a general economic increase in line with that negotiated in the "comparable" boards for 1978-79 where no cost of living allowance clauses were in place for 1978-79, the Board is of the view that there is no justification for the type of cost of living allowance clause proposed by the teachers.

Peel Elementary, 1980-81 - TEPLITSKY - p.9

A request for COLA was also made. Although this is a two-year agreement, this award is being fashioned when there is only slightly more than one year to run. In these circumstances, it is not a long-term agreement for which COLA protection is justified.

ALLOCATIONS: DIPLOME

Metropolitan Toronto Secondary, 1975-76 - DUBIN - pp.52-54

At present an allowance of $500 is paid to a teacher who holds a recongnized post-graduate degree and who has not used this degree for a change in group placement. This allowance is paid for one post-graduate degree only.

The Boards' proposal is that that allowance be increased to $700, a 40% increase on this item over the old contract.

The teachers are seeking an increase of $250. But, again, having regard to the increase in the basic salary for the teacher who will be receiving a post-graduate degree allowance, the 40% increase in this item, I think, is all that should be granted at this time. This amount compares favourably with what is being paid in other municipalities.

The teachers are seeking an additional allowance of $250 for each school year to a teacher who holds a second post-graduate degree which is not used for a change in group placement. The Boards resist payment for a second post-graduate degree on the premise that such a second post-graduate degree may not relate to the teacher's area of teaching specialization. They point out that "many second degree programs" add little to the overall qualification of a teacher in terms of a teacher's function in the classroom.

I think a second post-graduate degree which does relate to the teacher's specialization should be recognized, and I therefore decide that a teacher who holds a second post-graduate degree which is related to the subjects which are taught should be paid an additional allowance of $250 per school year. The determination of whether the second post-graduate degree does relate to the teacher's function in the classroom will be determined by the principal of the school.

Kirkland Lake Secondary, 1975-76 - JOHNSTON - pp.66-69

The item in dispute between the parties on this issue was the amount to be paid by way of allowance for post-graduate degrees. The previous figure had been $500 for either but not both of a Ph.D. or a Master of Arts degree (or its equivalent) with certain other qualifications. On the basis of the Fact Finder's report that some increase in this area might be appropriate the Board offered to raise the allowance to $550. The Teachers had requested $600 for the 1975-76 school year and $700 for the 1976-77 year.

The Teachers contended that this item, like responsibility allowance, should increase measurably to reflect the effects of inflation and the extra cost incurred in earning the degree. The Teachers submitted that "catch-up" was necessary on this item to compensate for cost of living increases in excess of 10% each year for the past two years and estimated at 9% and 7% for the next two years respectively.

The Board submitted that these allowances should not be related to cost of living increases. It also contended that there did not seem to be much evidence that a premium for post-graduate degrees had much effect in attracting teachers with such degrees or holding them in Kirkland Lake since it is some considerable distance from a university centre. The Board submitted that its offer was quite competitive with other boards on this issue. The Board also suggested that there was not necessarily any correlation between the discipline in which the post-graduate degree had been obtained and the subject area in which the holder would teach. In the Teachers' reply, a number of case examples were cited of individuals who had or were presently teaching at KLCVI and in all of these instances the post-graduate degree was in the same area in which the individual was teaching.

Each party supplied data on comparative references on this item. The Board's references were to other systems throughout the province showing several boards which paid $700, several others which paid $600 and a majority whi-h paid from $400 to $500. I conclude that in this instance comparisons to other centres somewhat remote from the major population corridors are more appropriate because post graduate degrees may be of greater benefit in those centres and additional incentives may be necessary to attract their holders. A comparison of post graduate degree allowances in Ontario secondary schools drawn from the geographically comparable areas shows the following picture.

Cochrane-Iroquois Falls	$600
Kapuskasing	$500
*Lakehead	$700
Nippissing	$500
Timiskaming	$700
Timmins	$600
West Parry Sound	$700
*Sudbury	$400
Espanola	$500
Dryden	$650

* University centres

I conclude that the Teachers' request of $600 for 1975-76 is appropriate but that the figure should remain at $600 for 1976-77 and not rise to $700 as the Teachers requested. This award will ensure that Kirkland Lake provides a reasonably attractive incentive but is not the highest in the province with respect to this incentive. The Teachers make a reasonable case for some increase beyond the Board's offer, bearing in mind that the Board's increase was, in fact an increase of ten percent beyond the current level but remembering also that this item had experienced no change for several previous years. I believe that there is in general a correlation between the holding of a post-graduate degree and the quality of teaching and leadership in secondary school education and that recognition of the post-graduate degree through a generous allowance is a factor in attracting teachers

to a particular school and holding them there. I conclude that a reasonably generous allowance for such degrees is consistent with the desire of Kirkland Lake to maintain a high quality of education at KLCVI.

Sault Ste. Marie Secondary, 1978-79 - DOWNIE - pp.14-15

The desire of the Teachers to relate responsibility allowances in a fixed manner to increases in the salary grid is incorrect and unrealistic. The allowances are payments on top of regular salary which under my award will be increased substantially. There is no reason why allowances should be adjusted every year or in a lock step manner with regular salary. Rather they should be reviewed and renegotiated from time to time in response to changing job requirements and demands.

In the collective agreement which has expired an allowance of $670 is paid to teachers who hold a Canadian Masters Degree and $940 for those who hold a degree at the Doctoral level whenever the degrees are not used as a basis for placement on the salary grid. The Teachers' request is that the allowance be increased at the same rate applied to the salary schedule. The Board proposed that Extra Degree Allowances for 1978-79 of $700 for a Masters and $1,000 for a Doctorate, but no additional increase in 1979-80, would be equitable.

Precisely the same arguments apply here as in the previous section. The Board presented E.R.C. statistics on the Masters degree allowance for the year 1977-78. I am convinced that the Board's position is a fair one. My award therefore is that effective September 1, 1978 the Masters allowance be changed from $670 to $700 and the Doctoral allowance be changed from $940 to $1,000. In the second year the allowances should remain at $700 and $1,000, respectively.

York County Secondary, 1979-80 - BURKETT - pp.11-12

The Board is satisfied, however, that the extra degree allowances paid by the York County Board lag behind those paid by the "comparable" boards. This Board does not accept the position of the Board that the status quo should be maintained in respect of the extra degree allowances because the extra qualification which a teacher holds by virtue of an extra degree is often a factor in his or her promotion to a position of responsibility. The Board is satisfied that the extra degree allowances should be increased by the same percentage amount as the responsibility allowances.

Kirkland Lake Secondary, 1981-82 - BARRETT - p. 27

The Board's offer on extra degree allowances would not restore the relative value of the rates set in 1978-79; however it would compare favourably with allowances paid in the other corridor Boards and therefore falls within the equitable range. Only the Timiskaming Board pays more than $700.00 for M.A. or Ph.D. degrees. We therefore award that Article 16.01 be amended to provide for an allowance of $700.00.

We would also amend Article 16.02 to provide for a $125.00 allowance for the B. Ed. degree.

ALLOCATIONS: POSTES A RESPONSABILITES (AUTRES QUE DIRECTEURS ET SOUS-DIRECTEURS)

Kirkland Lake Secondary, 1975-76 - JOHNSTON pp. 59-64

A responsibility allowance is a stipend paid to a teacher to perform administrative duties above and beyond those of normal classroom duties. These additional duties include ones which may be performed outside of school and some, such as the observation of teachers, which must be performed during school hours.

This responsibility allowance is calculated in the 1974-75 agreement pursuant to Board policy by ascribing a factor to a certain position of responsibility and then stipulating an appropriate allowance for that factor. Thus, in 1974-75 a commercial and technical director of a department received a factor of 2.5, a major department head a factor of 2, a minor department head, 1.5 and an assistant department head and a chairman, one. In the 1974-75 agreement, factor one warranted an allowance of $1,050.

The Teachers' request was that the allowance for factor one in positions of responsibility as defined by Board policy for 1975-76 should be $1,150 and for 1976-77 should be $1,250. The Board's offer for 1975-76 was $1,100 and for 1976-77 was $1,150.

The Teachers submitted that because Kirkland Lake was in a somewhat remote area, persons in positions of responsibility did not have the ready availability of expert assistance and resource materials from consultants and the subject heads in nearby schools or administrative offices. Consequently, considerably more initiative and leadership was expected from them in order to provide professional development for teachers in their subject areas. I conclude that there is considerable merit to this argument.

The Teachers also contended that the responsibility allowance is payment for a function that a teacher performs and that some attempt must be made to relate increases in payment for this function to increases in cost of living. The Teachers supplied the following chart relating responsibility allowances to consumer price index increases *(chart omitted from excerpt)*.

I believe there is considerable force in this argument as well.

Comparative figures supplied by the Board for a sampling through the province show the following pattern *(chart omitted from excerpt*

However, to view this sampling in proper perspective it must be recognized that some of these responsibility allowances are part of the base on which a cost of living allowance is computed (e.g. Carleton, Kapuskasing, Lincoln, Nipissing, Waterloo, Windsor, York County). The cost of living amount is added on during the course of the agreement and folded in as a base for the next agreement so that the total benefit to the teacher will be higher than the dollar figure appearing in the table above. Moreover, one or more of the agreements, (e.g. Windsor), have expired and are currently under negotiation with the possibility of an increase in the responsibility allowance.

In considering the comparative material over the past few years in geographically proximate boards and others throughout the province it appeared that historically the Kirkland Lake Board has assigned a relatively high value to responsibility allowances. It was apparent too during the proceedings that the parties took considerable pride in the quality of education at KLCVI. There was some evidence to suggest that its curriculum and other programs bore the hallmarks of sound leadership. The monetary costs of acceding to the Teachers' request on this item are not high but the consequences in terms of the quality of education could be significant. This observation may be underlined by the further one that the next several years may be particularly vital ones in terms of changes in high school education in this province and the quality of leadership expected from those in positions of responsibility. Hence, I conclude that an award on this item which would at least maintain the position of the Kirkland Lake Board as one that places a comparatively high value on responsibility allowance is appropriate.

I conclude that an award which would maintain this position of high value attached to responsibility allowances without causing Kirkland Lake to become the provincial leader is appropriate. Hence, I conclude that the Teachers' request for 1975-76 ($1,150) is a reasonable one and that for 1976-77 the allowance should rise by $50 to $1,200 but not to the full amount of $1,250 as suggested by the Teachers.

Sault Ste. Marie, 1975-76 - *KENNEDY - pp.31-32*

The Teacher justification for increase in these allowances rests very simply on the proposition that an increase in salaries should be accompanied by a proportionate increase in the other allowances that are paid in the form of salary. In principle, I agree with this approach in determining the treatment of responsibility allowances, but there are two reasons why for the purposes of this Award I depart from that principle and award for each of the years in question the responsibility allowances as proposed by the Board.

(1) It would appear that the number of Teachers receiving additional allowances for positions of responsibility in the system in relation to other jurisdictions is relatively high and the actual level of allowance being paid and proposed by the Board compares very favourably to other jurisdictions.

(2) Very substantial increases are being given on the grid by virtue of this Award and I think it appropriate in all the circumstances to maintain responsibility allowances to the levels proposed by the Board.

Accordingly, it is my award that with respect to Article 6.01 the position of the Board will be accepted.

Kent Secondary, 1978-79 - *KENNEDY* - *p.13*

It would be our view that, in reality, these payments, in substance, reflect the characteristics urged by both parties. It is true that they constitute a response to job requirements and demands, but we think that there would also be an element of normal salary considerations in their make-up. They constitute, after all, a reflection of increased work load arising from a position for which the appropriate compensation ought to vary both in response to changing job requirements and demands and changing economic conditions and salary trends. In considering the comparative basis of these allowances in the context of Kent County, they are, in general, well in line with practice elsewhere; and the relative position of the Board on the allowances is generally equal to or better than the relative position relating to grid structure.

Sault Ste. Marie Secondary, 1978-79 - *DOWNIE* - *p.14*

Here I must take issue with the Teachers' position. The desire of the Teachers to relate responsibility allowances in a fixed manner to increases in the salary grid is incorrect and unrealistic. The allowances are payments on top of regular salary which under my award will be increased substantially. There is no reason why allowances should be adjusted every year or in a lock step manner with regular salary. Rather they should be reviewed and renegotiated from time to time in response to changing job requirements and demands.

The Board has proposed no increase in these allowances for 1978-79 but have proposed a 6% increase on all positions of responsibility for 1979-80. I believe the Board's proposal is a fair one.

York County Secondary, 1979-80 - *BURKETT* - *p.14*

We have not been satisfied that an increase to the responsibility allowances for 1979-80 greater than the 6% offered by the Board is justified. The suggestion of the teachers that the 12% increase demanded for 1979-80 be averaged over the previous years in which there has been no increase ignores the give and take of collective bargaining and the trade-offs made to arrive at mutually acceptable settlements over past years.

Kirkland Lake Secondary, 1981-82 - *BARRETT* - *pp.24-27*

In the existing Agreement the various positions of responsibility as defined by Board policy have been assigned a "factor" value which then determines the salary premimum for those positions of responsibility. The concept of "Factor 1" was first introduced by the Board in 1974-75 through a policy entitled Secondary School Organization. This policy defined the positions of responsibility, assigned a factor value to

each, and stated that "the responsibility 'Factor 1' will be a matter for salary negotiations". Since its inception the value of Factor 1 has been a matter for arbitration in five of seven years.

The Teachers now propose wide-sweeping changes in this Factor System. They propose first, to peg the value of Factor 1 as 4% of category IV maximum. They then go on to propose that this factoring system be applied not only to positions of responsibility but to salaries of principals, vice-principals and payments for extra degree allowances. This would have the effect of indexing all of these extra allowances to the salary grid.

The Board offers a $50.00 increase in the Factor 1 value.

With respect to responsibility allowances, Factor 1 has not been altered since 1978-79, and we think that the Board's offer of a $50.00 increase is sufficient to restore its relative value, and therefore award a $50.00 increase for Factor 1.

GRATIFICATION DE RETRAITE

Lambton Elementary, 1977-78 - KENNEDY - pp. 14-15

We are of the view that there should be no change in the provisions of the retirement gratuity from the provisions which existed in the 1976-77 Collective Agreement, and our Award for both years is therefore that those provisions remain in the contract unchanged. The matter was considered by Mr. Teplitsky in his award determining the 1977-78 agreement between the Lambton County Board of Education and its secondary teachers, and we see no reason to come to any different conclusion than was reached by him in his award. We do not, however, wish in adopting that position to be taken as adopting much of the rationale that was placed before us by the Teachers in support of the continuation of a retirement gratuity. Specifically, a substantial portion of the Teacher argument was directed to the issue of whether or not it was a significant cost item, and based on experience in Lambton, the Teachers argued that the amounts actually paid out on retirement gratuities were, in fact, very small. The argument was essentially blind to the real concern raised by the Wyatt report that the retirement gratuity system creates a very large, unfunded liability which some future Board will have to meet. The Teacher position that this is an insignificant cost item simply ignores the fact that future Boards are going to have to pay the cost and future Teachers, because of this, are going to face the pressures of reduction in other areas of Board expenditure. The parties ought to recognize that the retirement gratuity is, in fact, a significant cost item, and the real issue for them to determine is whether or not this is an area in which they wish funds to be expended. We recognize that it is an earned benefit and that a quid pro quo ought properly to be required in conjunction with any basic changes. However, that is not to say that it should be maintained as a sacred cow and not be replaced by something which may better meet the legitimate needs of Teachers. It would seem perhaps that the needs of a young teacher who encounters long-term disability might well place higher in the scale of priorities than the payment of one-yalf a year's salary to a teacher who is retiring on one of the better pension arrangements available in either the public or private sector.

Huron Secondary, 1977-78 - JOHNSTON - pp. 9-10

1. <u>Present Provision</u>

> A branch Affiliate member who has completed twelve (12) years service in Huron County Schools and who is eligible for a pension under the provisions of the Teachers' Superannuation Act, shall be entitled to the payment of a gratuity on termination of employment.

2. Proposals

(a) The Board proposed that this provision be modified by adding to it the words "and is fifty years of age."

(b) The Teachers proposed that the current provision be maintained.

3. Analysis

One hundred and eight of the 273 teachers will have completed twelve years service by June, 1979. The Board's proposal would restict the benefit to 38 teachers. I attach some significance to the fact that a large number of persons would lose a presently available benefit under the proposed change.

The Board attached significance to the cost of continuing this benefit, particularly when it is non-funded. This is a reasonable concern. On the other hand there are certain cost savings when a teacher with twelve or more years seniority and at a high salary level terminates and - as is frequently the case - a relatively junior person at a lower salary level is hired as a replacement.

The Board drew attention to the "Wyatt Report" (1976) prepared for the Ontario Secondary School Trustees Federation. It expressed concern about increasing liabilities of this benefit in the next few years and suggested that relatively generous pension plans - particularly when indexed - had reduced its protective importance for teachers. These findings are significant.

The Board also noted several recent settlements - Elgin, London Elementary and Secondary and London Middlesex RCSSB - which have cut back on this benefit by eliminating it for new hires. This may be a reasonable way to negotiate out of this benefit. However, the Board's proposal here would have a significant retroactive impact.

One must be conscious of the history of this benefit. A sick leave gratuity has been available since the inception of the Huron County Board of Education since 1969. Prior to that the individual community boards had similar plans. Indeed, it has been recognized in The Education Act and persisted for the last 30 years. The same benefit exists in current collective agreements between the Board and the OPSEU and the C.U.P.E. bargaining units.

The benefit has been tested in several other recent arbitration awards - Fort Frances - Rainy River (1978) and Lambton (1978) - and survived. It was tested by a work stoppage in 1971 when its removal was proposed by the Board and it survived. And, of course, it has been tested by the work stoppage that gave raise to this arbitration.

I conclude that this benefit should not be reduced in this arbitrated 1978-79 agreement without some other compensating benefit for the Teachers. I have not in the balance of this award attempted to provide any additional compensation which might trade off the curtailment of this benefit as proposed by the Board or its diminishment in some other way.

Lambton Secondary, 1977-78 - TEPLITSKY - pp. 11-13

I would not remove the retirement gratuity for Teachers starting in September, 1977. I trust that I may be forgiven for supporting this conclusion with certain excerpts from the award which I rendered in the Fort Frances final offer selection wherein I had occasion to make the following observations which pertain equally to this situation:

> "In my view, the retirment gratuity now plays a role in the relationship between Boards and Teachers other than originally envisaged. The "20-day sick leave-accumulation-retirement gratuity" package is viewed as an alternative to long-term disability insurance and in fact, albeit inadequately, performs that function.
>
> It is, therefore, unreasonable to remove the gratuity without offering anything in its place and stead. I recognize that it is difficult today, given the AIB guidelines, to bargain for long-term disability insurance when the cost will, realistically, be charged to the Teachers regardless of whether the Board undertakes the payment. Other solutions or trade-offs may be found.
>
> At the same time there are relatively few new Teachers being hired and future liabilities from that source are limited for the next period of years. During that time, in my opinion, the parties will be able to negotiate at the bargaining table conditions of employment which reflect the legitimate concerns of the Board to limit its unfunded liabilities and the legitimate concerns of the Teachers to have adequate long-term and short-term health insurance.
>
> In conclusion, I wish to deal with several points made in the Board's reply to the Teachers' position in attempting to answer the "quid pro quo" argument. The Board contended that if a long-term disability plan were offered the present staff would enjoy that benefit "not insted of" but "in addition to" the gratuity. I point out that

> nothing prevents a Board from only offering to pay for long-term disability for those teachers who would not be receiving the gratuity.
>
> The Board then argued that since the removal of the gratuity would not effect any members presently within the bargaining unit, any quid pro quo should await the input of those affected. This argument is more ingenious than cogent. To wait, as argued, involves the immediate loss of the gratuity. I doubt that future members of the bargaining unit would appreciate the concern expressed by the Board. Lastly, the Board argues that since the gratuity would not vest for 10 years, the Teachers have that period of time to negotiate a "quid pro quo". This argument cuts both ways. In any event, I think it sounder, if any "quid pro quo" were negotiated simultaneously with the loss of a benefit."

Insofar as the unlimited accumulation is concerned, I can find no reason for changing it. It is benefit which was negotiated and must also be viewed in the context of a salary grid which for the most part is within the bottom 10% to 25% of the province.

Sault Ste. Marie Secondary, 1978-79 - DOWNIE - pp. 17-19

Articles 9.00 and 10.00 should be considered concurrently. The Board proposed related changes to both articles, while the Teachers argued that there should be no change in the articles in 1978-79 or 1979-80. Article 9.00 provides for the accumulation of sick leave credits. The Board proposes to "grandfather" this aspect by making the terms of the article applicable only to those who were on staff prior to September 1, 1978. In article 10.00 they propose that those coming on staff as of September 1, 1978 be provided with an income protection plan during sickness and that those on staff prior to that date be provided an improved Long-Term Disability (L.T.D.) plan paid for at Board expense. The retirement gratuity plan would remain in effect for those coming on staff before September 1, 1978.

The Teachers simply argue that accumulated sick leave and retirement gratuity have been in existence for many years, that they are not interested in the Board's proposal, and that in three arbitrations elsewhere in the province the teachers' position has been upheld.

I need not deal with the Board's L.T.D. and income protection plans except to note that they are comprehensive. The Board's stance on accumulated sick leave and retirement gratuity is a familiar one at the negotiating table today in Ontario education.

The Board's concern of course, is with its unfunded liability. It referred, as many other Boards have, to the findings of the Wyatt Report (1976) on the matter. The overriding fact, however, is that retirement gratuity is a long standing benefit in Ontario education. Dean Johnston in the case of Huron County and District 45 of the O.S.S.T.F. commended on retirement gratuity in response to a Board proposal to restrict payment of the benefit:

> One must be conscious of the history of this benefit. A sick leave gratuity has been available since the inception of the Huron County Board of Education in 1969. Prior to that the individual community boards had similar plans. Indeed, it has been recognized in the Education Act and persisted for the last 30 years.

The Board made reference to Professor Teplitsky's selection in final-offer arbitration at the Fort Frances - Rainy River District Roman Catholic Separate School Board (1978). Professor Teplitsky selected the teachers' position thus denying the Board's request that the retirement gratuity provision apply only to those hired before September 1, 1977. Spokesmen for the Sault Ste. Marie Board, however, point out that the selector stated that it is "unreasonable to remove the gratuity without offering anything in its place" in the form of an L.T.D. plan and they inferred from this that, if the Fort Frances-Rainy River Board had offered such a plan, Professor Teplitsky would have selected the Board's position. I am not convinced of this interpretation. Professor Teplitsky stated in the concluding portion of his decision:

> At the same time there are relatively few new teachers being hired and future liabilities from that source are limited for the next period of years. During that time, in my opinion, the parties will be able to negotiate at the bargaining table conditions of employment which reflect the legitimate concerns of the Teachers to have adequate long-term and short-term health insurance. (underlining mine)

Certainly it is my own feeling that the tradeoffs should be worked out at the bargaining table by the parties.

Finally, the Board as noted earlier concluded an agreement with their elementary school teachers without insertion of the changes they have proposed at this arbitration. The Board in their brief stated their commitment to parity between elementary and secondary school teachers. The concept, I believe, should logically be extended to the benefits area.

No clause, of course, is totally sancrosanct but, in the case before me, I believe that it is appropriate for the parties to work out the details and trade-off if there are to be changes to articles 9.00 and 10.00. I commend the Board for an imaginative and comprehensive proposal but, for the above reasons, my award is that articles 9.00 and 10.00 remain unchanged in 1978-79 and 1979-80.

Halton Secondary, 1979-80 - TEPLITSKY - p. 4

The Board seeks a modification of the retirement gratuity as a quid pro quo for staffing changes.

On other occasions I have expressed my concerns about the efficacy of retirement gratuity as a benefit. No useful purpose would be served by a repetition of these views in this Award. In the 1978-1979 Collective Agreement, the parties agreed in Article 24 to formation of a joint committee to "study replacement plan(s) for the current Retirement Gratuity...with a view to future implementation". This committee did not meet. Until this consultative process, which the parties agreed to and which provides the best vehicle for the solution of this question, has been explored, it would not be sound for me to make any changes in this benefit. Accordingly, this request is denied.

Kirkland Lake Secondary, 1981-83 - BARRETT - pp. 22-23

In the existing Agreement, as in many Agreements across the Province, there is a provision that unused sick leave credits shall accumulate and be paid out as a retirement gratuity upon retirement. For many years the Board has been attempting to negotiate a "grandfathering" of this clause to provide that it only be paid to teachers presently employed by the Board and not to newly hired teachers, citing in support the large unfunded liability and reduced 'need' for this type of payment to assist retiring teachers. Naturally the Teachers resist. In our opinion, this clause should only be altered by mutual consent of the parties through collective negotiations. If this is indeed a substantial priority for the Board, they should trade it off through bargaining for something that is a substantial priority to the Teachers. Only the parties can determine the real value of trade-offs and we would not attempt to do it for them.

The Teachers request a sight wording change in the existing clause simply to identify the Board policy under which the gratuity is paid and we award that the clause as amended by the Teachers be included in the Collective Agreement.

AVANTAGES SOCIAUX

Metropolitan Toronto Secondary, 1975-76 - DUBIN - pp. 59-62

The teachers are seeking improvements in each of the items which are under the heading Fringe Benefits in the present contract, as well as the introduction of payments by the Board for semi-private hospital care and a dental plan, neither of which items has previously been included in the former contract.

It is to be observed that the proposal of the Boards represents a very substantial improvement in the cost-sharing program for these benefits when compared with what had existed in 1974-75. Once again, none of these items which have a direct impact on cost can be considered in isolation.

For the year 1974-75, the total cost of salaries, employee benefits and staffing for Metropolitan Toronto School Boards for those employees on staff as of January 1, 1975 when the bargaining commenced was $145,660,958. Giving effect to what is proposed by the Boards on the premise that those persons were sill in the bargaining unit in the year 1975-76, including requirement for additional staff on the basis of the new staff allocation proposed, the total cost would be $181,886,301, and for the year 1976-77, $203,444,263, representing a total increase of 39.7% over the two years.

Again this does not represent the actual difference in cost to the municipality for those years by reason of the change in personnel in the bargaining unit. However, it is a reflection of the increases which teachers, of similar qualifications and experience, will receive in the present contract with what they would have received under the old contract. It does introduce for the first time a provision for semi-private room, improved extended health benefits and group life insurance benefits.

Having regard to the very substantial increases in the remuneration which I have already decided upon, I think the proposal of the Boards in the fringe benefit area is all the teachers should reasonably expect to receive throughout the term of my award. I am satisfied that it compares very favourably with fringe benefits which other teachers receive, and with fringe benefits that other employees receive. A dental plan and long term disability insurance must be left as a matter of negotiations for ensuing contracts.

Lambton Elementary, 1977-78 - KENNEDY - pp. 13-14

The parties have referred to us the issue of determining the appropriate percentage of the fringe benefit package to be paid by the Board and have agreed that whatever percentage we determine was appropriate for the year ended August 31st, 1978 would be continued for the second year agreement. We have considered the

arguments made by the parties and the information provided as to percentages paid by other Boards in other areas. We have further considered the award of Mr. Teplitsky wherein, by arbitration, he settled certain issues between the Lambton Board of Education and its secondary teachers for the year ended August 31st, 1978. We recognize that a preponderence of Boards are paying 90% or 100% of fringe benefit costs, but we further recognize that with respect to this particular Board, the accumulation of sick leave is very generous and the formula with respect to the retirement gratuity is further designed to protect the gratuity of long-service teachers who may, in fact, encounter periods of illness in their later years. Taking all of these factors into consideration, we have concluded that the appropriate percentage of compensation for the Board is 75%. We would not, however, accept the Board proposal that the percentage should be of the premium level in force as at August 31st, 1977 with respect to other than the life insurance coverage as we believe it consistent with the principle of a cost-sharing of a fringe benefit that the same percentage sharing be applied to increases in premium as well as to the base level of premium. Accordingly, it would be our Award that the Board contribution to be in effect as of the date of this Award will be 75% of O.H.I.P., major medical drug and dental plan with Blue Cross Dental Rider #1 or its equivalent and 100% of the premiums for the first $25,000.00 coverage of group life insurance and 50% of the premiums in effect as of August 31st, 1978 for coverage above $25,000.00. The employees will pay the remainder of the cost. It would be our determination that such an award would have been the appropriate level for the first year contract, but we consider that the expense and inconvenience to the Board of actually working out and putting into effect any adjustment of the cost-sharing of those premiums would out-weigh the benefit to the Teachers and, accordingly, while we direct that the foregoing be the Award for the first contract year, we direct that, in point of fact, there be no retroactive adjustment for that year.

Northumberland & Newcastle Secondary, 1978-79 - KENNEDY - pp. 10-15

The Teachers propose the following amendments to the fringe benefit package provided under the prior Collective Agreement:

(a) Benefits are to be extended to teachers in part-time employment.

(b) The words "or its equivalent" are to be added to the Article 12.02 which describes the specific plans in force.

(c) A clause is to be added which, in essence, provides that there will be no change in carrier without the approval of the Teachers, and any savings negotiated in premiums would be applied to improving benefits under the policies.

(d) A clause is to be added providing for the improvement of the Blue Coss extended health care package to the 10/20 deductible provision with the cost to be borne by the Board and offset by the Teachers' portion of any unemployment insurance rebates paid to the Board.

(e) If any dividends or rebates are received from carriers, they are to be applied on the same basis as the premiums were paid. In other words, the proportion of the rebate applicable to extra group life coverage for which the Teachers have paid themselves, would have to go back to the Teachers and not to the Board.

We propose to deal with those requests in the following manner:

(a) We were advised that in point of fact there is only one part-time teacher in the system, and in any event, as a question of principle, we do not consider it appropriate that the identical fringe benefits be paid to part-time teachers as are paid to full-time teachers. The cost for both types would be identical to the Board whereas the service rendered by a part-time teacher is less and may be significantly less than the service rendered by a full-time teacher. We, therefore, would award no change in this Article.

(b) We think it is appropriate to add the words "or its equivalent" to the preamble of the Article specifying the benefit coverages. However, consistent with that amendment, it is to be noted that the present Collective Agreement does not define the group life insurance and long-term disability plans in force. Accordingly, to both of those items, being items 4 and 5 in Article 12.02, we would add the words "as presently in force."

(c) The area of benefit coverage is one in which there is a significant range of costs and of benefits provided. It is reasonable that the Board have the flexibility to negotiate the best available terms, and in our view, the Teachers are adequately protected by the earlier provision specifying that the Board must provide the specified plans or their equivalents. The main concern of the Teachers, expressed to us on the hearing, as underlying this request, was a concern that a change in carrier could result in a deterioration of benefits. It is our view that that aspect of the matter is adequately protected by the equivalency provision, and we would not be prepared to award the clause as requested by the Teachers. It is further noted that the Agreement does provide for a staff advisory committee representing both elementary and secondary teachers, and that the Boards is to consult with that committee.

(d) With respect to unemployment insurance rebates, it is the position of the Board that there has been alway an understanding between the parties that those rebates already were being applied in providing the long-term disability and other benefits under the Collective Agreement. We are not in a position to determine, based on the information which we received, whether there was, in fact, any such understanding,

or whether it is a simple situation of acquiescence on the part of the Teachers in a situation of which they were not really aware. It is the Board position that a clause of the nature requested should be included, but on the basis that the parties recognize that the employee protion of unemployment insurance commission rebates are being applied to improvements in the long-term disability benefits of the Agreement. In other words, the Board seeks an acknowledgement in essence substantiating the understanding which it alleges has existed and the Teachers request a specific improved benefit, but both agree that it would be desirable to clarify the status of the U.I.C. refunds. In support of the proposal, the Teachers point out that a comparable benefit was negotiated in the elementary contract for 1978-79, but the Board points out that that improvement was considered as part of the overall compensation package and claims that the lump sum increase was in fact reduced by the amound necessary to fund the improvement in the Blue Cross package. We do not propose to make any determination affecting past years and the entitlement to U.I.C. rebates, and if the parties wish to pursue what is past, it will have to be in some other forum. We consider the clause as proposed by the Teachers to be an appropriate disposition of the issue for the period of the Collective Agreement which will result from this arbitration. We would therefore award Article 12.04(a) as requested by the Teachers deleting therefrom the reference to extending all benefits to part-time teachers. We further specifically recognize that the improvement in the Blue Cross extended health care coverage cannot be made retroactively, and that the change in the plan is to be made as soon as is practicable following the date of the release of this Award. It is our intention that this clause does dispose of the issue of the Unemployment Insurance Commission rebates for the contract year under review.

(e) We were advised by the Board, and it is our understanding that the premium system on the coverages is not of a nature that would permit any ready determination of the proportion of premium rebates, if any, that would be properly applicable to amounts paid by the Teachers on additional coverages arranged. It would also appear that the amounts, at best, would be minimal, and that the administrative costs of distributing same would not be justified. Accordingly, the request with respect to premium rebates is denied.

York County Secondary, 1979-80 - BURKETT - p. 12

The Education Relations Commission data pertaining to School Board contribution to fringe benefit premiums shows the York County fringe benefit package for 1978-79, as agreed between the parties, to be "middle of the pack." The same conclusion is reached when the York County fringe benefit package is measured against the "comparable" Boards. The York County package is clearly inferior to that provided to secondary school teachers in Peel County and

Scarborough and no better than that provided in any of the other "comparable " Boards for 1978-79. Assuming some improvement for 1979-80 in both the "comparable" Boards and generally across the province an improvement to the York County package is warranted for 1979-80. We have not been satisfied, however, that the Board should be required to pay the full premium cost of the existing plans. We are of the view that the benefit package should be improved for 1979-80 to require the Board to assume the full premium cost of both the extended health and the group insurance plan.

Canadian Forces Base Petawawa Secondary, 1980-81 - MacDOWELL - pp. 35-3

The employer proposes to reduce its responsibility for OHIP premiums from 100% to 75%, and divert the funds thus released to a dental plan to be mutually agreed upon, but otherwise to be entirely paid for by the teachers. In other words, the employer is not prepared to increase its financial commitment to fringe benefits at all, while the OHIP reduction will bring the Petawawa package in line with Renfrew on this point. The teachers point out that the existing package has been in place since 1975 (which implies, of course, that this "old" package is still better than the current Renfrew position and the employer has declined to improve it despite a repeated request and much study. The teachers proposed a quite persuasive method of cost saving by switching carriers and adopting the Ontario Teacher's Insurance Plan (OTIP) which has the dual benefit of lower rates and portability. The teachers also propose to assume responsibility for the long term disability (LTD) program. In their submission, the savings from the change of carrier and the switch of responsibility for LTD justify imposing liability on the Board for a proposed dental plan.

There is much to be said for teachers' position for, the dental plan aside, it does appear that the OTIP can provide enhanced benefits at reduced cost to the employer. On the other hand, although the current fringe benefit package has been in effect for some time, it is not demonstrably inferior to those of the Boards which have traditionally figured in the parties' bargaining. C.F.B. Petawawa pays 100% of OHIP premiums as does Nipissing; but in Renfrew, Ottawa, and Carleton, the teachers share part of the cost. Blue Cross semi-private coverage is paid for 100% by the employer herein, not at all by Nipissing and Carleton, and only partially by Renfrew and Ottawa. An LTD Plan is provided free by the employer herein, and by Nipissing, but not at all by Renfrew, Ottawa or Carleton. Renfrew, Ottawa and Carleton all have a shared accidental death and disability plan. Neither Renfrew nor Nipissing have a dental plan and Ottawa and Carleton have one which is jointly funded. While many Boards have a dental plan, as many have none at all, and none of those to which we have referred were fully funded by the employer. It is admitted, moreover, that a dental plan is particularly subject to cost escalation. Thus, while there is some ground for revision (a fact acknowledged by the employer) it can not be said that the

existing package is markedly inadequate - especially when viewed in light of the salary advantage apparently enjoyed by Petawawa teachers, which permits them some flexibility in respect of jointly funded revisions. In the circumstances then, the teachers' claim for a review is less than compelling, and we are inclined to endorse the status quo.

There is an additional reason why we think a change in the fringe benefit program is inappropriate at this time. By the time this award is released, the contract year to which it applies will be almost over, and the parties will be back into negotiations. Since benefit plan changes cannot really be made retroactive, the sole impact of our award would be on the future, and the issue would immediately be subject to negotiation. From time to time, Boards of arbitration have increased the level of benefits or coverage, but it is very unusual for an arbitrator to prescribe a change in carrier or require adherence to a particular plan. In the circumstances of this case, it seems singularly inappropriate to require a restructuring of the benefit package and a change of the carrier to OTIP - however economical the latter may appear. Finally, it is obviously desirable that teachers in both the elementary and secondary system should share the same benefit package, and this would not be accomplished, and might well be frustrated, by our award. For all of these reasons then, we are not persuaded that the fringe benefit package should be altered by our award. Instead, we endorse the status quo, and refer the matter back to the parties for further negotiations.

Kirkland Lake Secondary, 1981-82 - BARRETT - pp. 23-24

The Teachers request improvements in the Fringe Benefit Package as follows: They want the Board to increase its contribution to OHIP from 75% to 100% and to increase its contribution to the Dental Plan from 75% to 100%, as well as upgrading the coverage, and to introduce a new Vision Care Program with the Board paying 100% of premiums. At present the Board subsidizes to the extent of 100% a Group Life Insurance Plan, Extended Health Plan and Long Term Disability Insurance Plan. The Extended Health Plan has a limited Vision Care coverage included in it.

The Teachers state that the Fringe Benefit Package has not been improved over a 5 year period and has in fact deteriorated because the Dental Plan does not cover current rates as it once did. The Board says on the other hand, that the actual cost of premiums of the Plans has been increasing steadily every year and that in particular the total cost of all premiums has risen from $37,475.00 in 1976 to $83,213.00 in 1980-81. The entire Teacher proposal as a package would require a 24% increase in cost to the Board which would add .7% to the entire cost of the Agreement.

In view of what we consider to be a very reasonable salary Award, we are not inclined to substantially improve the Fringe Benefit Package. However it would be a significant benefit to the Teachers to have the Dental Plan upgraded to cover current Ontario Dental Association rates. We would not award a 100% contribution by the Board to this plan, but we would otherwise adopt the wording of that clause as proposed by the Teachers. Article 13.07 will accordingly be amended as follows: "The Board shall contribute seventy-five percent (75%) of the premium for property enrolled teachers and their property qualified dependants in a Dental Plan, such Plan to provide benefits equivalent to those contained in Group Insurance Program booklet, effective June 1st, 1981, as issued by the Commercial Union Assurance Company for the employees of the Kirkland Lake Board of Education (Group Policy Number G1691-56/2262."

CONGES: GENERAUX

Halton Secondary, 1979-80 - TEPLITSKY - pp. 9-10

I have no doubt that a 4 over 5 plan can prove of benefit, particularly in a system such as Halton, which is fortunately, not experiencing severe surplus-redundancy problems. However, no useful purpose would be served by my imposing a discretionary plan (which is all that is sought by the Teachers) of my own construction. This matter should be referred to consultation and a bipartisan committee struck to report to the Teachers and Trustees by December 30, 1980. I refer the parties to my Award in Norfolk dated November 1, 1978, in which I attempted to outline the responsibilities of such a committee.

The matter of sabbatical leave should also be referred to consultation.

The question of early retirement is more complex and of more doubtful social value. I would not encumber this consultative process with the burden of the early retirement question. In any event, there is no pressing need in Halton for such a plan because, as I have indicated, the surplus-redundancy matter is not acute.

CONGES: AVEC TRAITEMENT DIFFERE

North York Secondary, 1979-80 - TEPLITSKY - pp. 15-16

The basic disagreement between the parties relates to the first year in respect of which the Plan becomes operative. The Teachers ask that it become operative for 1981-82 when the M3 Teachers will be entitled to the year of leave. The Board is suggesting 1982-83 as the first year. It is important that the Plan be put into place as quickly as possible. The difficulty in North York stems from the fact that the necessary deductions in pay have not been made thus far. However, there will be available for this purpose, considerable retroactive pay and 44% of the 1979-80 salary has yet to be paid. Accordingly, it is my award that Teachers may apply for 1981-82 no later than April 15, 1980 and that for such applicants, the retroactive pay shall have deducted from it a sum sufficient to satisfy the percentage that would have been paid had this clause been in place effective September 1, 1979. The parties have also agreed that the Plan be in effect in the third, fourth and fifth years.

Ottawa R.C.S.S., 1979-80 - McBRIDE - pp. 8-9

The first subject with which I propose to deal is that of deferred salary plan. There was really no quarrel between the parties that such a plan should be implemented. They were unable to reach agreement in one principal area. That area was related to a number of teachers who might in any one academic year avail themselves of the provision of a deferred salary plan.

While it had been the practice of the Board to give notice to a substantial number of teachers to whom the possibility of redundancy applied in an academic year, the best information that I could obtain from the representatives of the parties as to the probable number who would be actually redundant and hence terminated for the forthcoming year was 36.

The purpose of not only the deferred salary plan, but also the early retirement incentive plan, is to relieve against redundancy. If, for instance, a teacher who otherwise would be declared redundant can be retrained because another teacher will be

absent through leave arising from a deferred salary plan, then redundancy is ameliorated. Similarly, the adverse effect of redundancy is diminished if teachers who might stay on to normal retirement age take advantage of the opportunity to retire early because it is made possible or attractive through the provisions of an early retirement incentive plan.

So far as the instant deferred salary plan is concerned, the Board took the position that the maximum number of teachers who might take advantage of the plan in any one academic year should be confined to 6 in number. The teachers thought that this was unduly restrictive and did not realistically approach the problem of redundancy. After much consideration, my conclusion is if it were possible to reduce the redundancy difficulties facing the parties by attributing one-third of the problem to the benefits derived from the existence of a deferred salary plan and one-third to the existence of the benefits derived from an early retirement incentive plan and by leaving one-third of the problem to be solved in some other manner not arising from the existence of an agreement between the parties but through attrition of age or otherwise that such would be realistic. Applying that reasoning, it is my award that there should be included in the deferred salary plan, which will be part of the collective agreement between the parties, a provision for 12 teachers to be absent on leave through the deferred salary plan itself in any one academic year.

Canadian Forces Base Petawawa Secondary, 1980-81 - MacDOWELL, - p.22

This is a new issue and a "no cost item". Again, the difference between the parties lies not in the principle but in the way in which the plan is structured. On the basis of the parties' representation, it appears to us that the teachers' proposal is more flexible, from a management point of view, than that of the employer. However, we are not disposed to second guess the employer in this regard. We are satisfied that the agreement should contain a leave plan framed in the terms proposed by the employer, and we so award.

CONGES: AFFAIRES DE FEDERATION

Kent Secondary, 1978-79 - KENNEDY - pp. 16-17

In its position, the Board is prepared to grant members of the Collective Bargaining Committee leave to attend meetings for the foregoing purposes, but on the basis that for all such leave the Branch Affiliate will reimburse the Board for the cost of occasional teachers.

It is our view that the existing legislation imposes on each of the parties an obligation to participate in the collective bargaining process and that consistent with those obligations it is obviously necessary that the teacher representatives be permitted time away from the classroom as may be reasonably required in the performance of those duties. Refusal of such time off on the part of a Board of Education will essentially frustrate the bargaining process. However, we are not persuaded that the economic cost of meeting the statutory obligations ought properly to be transferred entirely or significantly to one of the parties. Based on the Board proposal there continues to be an economic cost to the Board by reason of the continuance of the other benefits under the Collective Agreement and, in essence, the reimbursement to the Board is really only the additional and actual out-of-pocket expenses incurred by the leave. It is our view that the Board position is entirely reasonable in allocating the economic cost inherent in pursuing the collective bargaining process and, further, that it is more consistent with the clauses which have been negotiated between the parties than is the Teachers' proposal in this area. Accordingly, on the question of Federation leave we would award the clause as proposed by the Board.

North York Secondary, 1979-80 - TEPLITSKY - pp. 20-21

The Board requests a change to make express what it said was current practice, namely, the A.E.F.O. were not entitled to the benefits set forth in 5.3.4.2.0. The fact is that A.E.F.O. and the Board have not experienced any difficulty with these clauses in the past. The Board has not persuaded me that the change in language is necessary and this request is denied.

The Teachers want to change the contribution from a requirement of reimbursement of the Teacher's salary to a requirement of paying the rate for an occasional Teacher. In my opinion, this situation has usually been treated as a leave without pay and the Board is entitled to be indemnified for the money it must pay to the Teacher who is not teaching. Accordingly, this request is denied.

Kirkland Lake Secondary, 1981-82 - BARRETT - pp. 13-14

The Teachers also wish to include in this Article a provision that the Board shall grant Teachers time off with pay for negotiations, grievances and arbitrations that fall during an instructional day, either by an agreement between themselves, or at the request of a third party. In the past the Board has twice paid the Teachers to attend on mediation sessions and on other occasions the Teachers Federation have reimbursed the Board for the Teachers' time spent on negotiations during the school day. At the Hearing the Board conceded that it was prepared to pay for time off for a grievor and the Branch Affiliate Chairman to attend a Grievance Hearing, but no more. We understand it is the practice in this School Board not to replace an absent Teacher with a supply Teacher for a one day absence. To that extent, the Teachers' attendance at mediation and arbitration is a non-cost item to the Board on the first day of the absence.

We do not believe that one party should subsidize the other for the collective negotiation, grievance and arbitration process because it is an equal process and costs should generally be borne equally by the parties. We assume that any cost of time off for Teachers is borne by their respective Federations and is not assumed by the individual teachers. In order to facilitate the collective bargaining process, the teachers must be granted time off, however.

We therefore award that a new clause shall be included in the Agreement entitled Article 4.03 as follows:

> "The Board shall grant time off with pay to the necessary committee members of the Branch Affiliates' Committee for negotiations, grievances and arbitrations that, through agreement between the parties or by request of a third party, fall during an instructional day. The Branch Affiliates shall bear the cost of any supply teachers necessitated by this Article."

CONGES: SABBATIQUE

Kirkland Lake Secondary, 1975-76 - JOHNSTON - pp. 51-53

The expired agreement provided for payment of 75% of salary for a year on sabbatical leave. The item in dispute here is the number of years ("indenture") a teacher must remain with the Board after he returns from a sabbatical leave. The Board's position was that three year's indenture was necessary for the teacher to discharge his responsibility. The Board submitted that a teacher leaving the employ of the Board prior to the completion of this three years must return to the Board one-third of the sabbatical leave salary paid for each year less than the three served after return. The Teachers' position was that a two-year indenture was appropriate. The Teachers agreed that a teacher leaving the Board's employ before the completion of the two years should be obliged to repay one-half of sabbatical leave pay for each year less than two served on return.

The Teachers contended that most of the sharing of new ideas, techniques and materials derived from the sabbatical experience has been obtained by the Board at the end of that time. Moreover, the Teachers contended that if the particular Board does not have the facility of offering advancement to a teacher, an opportunity earned through the sabbatical leave, then the teacher should not be held to his indenture and should be able to seek that opportunity elsewhere. Finally the Teachers contended that if the teacher sought advancement elsewhere in the province the benefits of the sabbatical leave would still be retained within the provincial educational system.

I cannot subscribe to these arguments fully. I beleive that considerable benefits from the sabbatical leave experience will accrue to the Board after the second year as well as in the first two years. For example, if any new programme, curriculum or method is pioneered by the teacher on the basis of his sabbatical leave experience it may take at least a third year upon his return to ensure that the innovation has been permanently implemented and operational with all of the necessary adjustments which ordinarily have to be made to any innovation in its experimental period.

When one considers the comparative situation of the treatment of service on return from sabbatical leave in the other neighbouring school systems (all of which require 3 years service on return with the exception of Hearst that does not appear to have a provision for sabbatical leave in the agreement), the Board's position here seems responsible and reasonably generous.

Sault Ste. Marie Secondary, 1978-79 - DOWNIE - pp. 20-21

The Board is proposing three chages. First, article 13.01 provides for a Sabbatical Leave Committee that includes both secondary and elementary school teachers. It provides for two secondary school teachers, two elementary school teachers, one secondary school principal, one elementary school principal, one superintendent or his nominee, and two trustees. The Board proposes to have separate committees for secondary and elementary school teachers. In the secondary school collective agreement the Board proposes a committee made up of three teachers and three members representing the Board.

At present, the Board must grant Sabbatical Leaves each year in the ratio of 1 per 100 members of the secondary school staff. The Board proposes to change the wording from "shall be granted" to "may be granted". The intent of this change is obvious and need not be discussed.

Lastly, the expired agreement provides that:

> A teacher on Sabbatical Leave shall receive 50% of his/her salary plus allowances. He/she shall be granted the option to augment 50% of his/her salary plus allowances by using sick leave credit to raise his/her total remuneration to 100% of his/her salary plus allowances.

The Board proposes to delete the last sentence.

The reason for the Board proposal rests with cost savings. The Teachers oppose the changes noting that this is a long-established benefit.

The principle of sabbatical leaves is well worth preserving for both parties. The purpose of sabbaticals is stated in the collective agreement and should be noted:

> To recognize members of the Branch Affiliate who are giving very good or excellent service, and to offer them an opportunity for enrichment which, in turn, will benefit the Sault Ste. Marie school system.

There apparently are no abuses to the sabbatical provision and, to qualify, a teacher must have a minimum of seven continuous years of teaching experience with the Sault Ste. Marie Board. The Board's teaching staff will be relatively unchanging in future years and therefore it will be necessary to use mechanisms such as sabbaticals to prevent atrophy in the system. Moreover, at a time when the concept of paid education leave, if anything, is on the rise in other sectors the Board's proposal is untimely. Finally, I see no reason to change the Committee concept that apparently has served the parties well in the past. For the above reasons my award is that article 13.00 remain unchanged in 1978-79 and 1979-80.

CONGE-MALADIE

Sault Ste. Marie Secondary, 1975-76 - KENNEDY - p. 15

The parties are in agreement on the language of this Article for the first year of the Agreement and this merely continues the provision from the 1974/75 Agreement. However, for the 1976/77 school year the Teachers propose an increase in the total permitted accumulation in the reserve of sick leave from 270 days to 300 days. The rationale is, of course, to protect the retirement gratuity which will be received by an elderly teacher in the event that illness during the final years of teaching reduce the accumulation below 200 days which is the maximum permitted for calculation of the gratuity. I personally feel that the whole practice of a retirement gratuity as a "carrot" to encourage teachers to make a minimum use of sick leave is a somewhat outdated procedure and that the substance of the problems involved are better handled by long term disability plans, proper retirement and pension plans, and term insurance provisions. Accordingly, I am not prepared to extend by arbitration a provision of this nature.

CONDITIONS DE TRAVAIL: VOLUME DE TRAVAIL

Metropolitan Toronto Secondary, 1975-76 - DUBIN - pp. 64-65

The average school day is approximately six hours in length and is divided into nine, forty minute periods or the equivalent thereof. Generally speaking, of the nine periods the teachers have teaching assignments in six of them. They have one period for lunch, one period free from all teaching and non-teaching duties and one period free of scheduled teaching duties, but subject to assigned supervision or "on call" substitute teaching. The evidence before me discloses that as a general practice the teachers are not assigned supervision or "on call" duties in the ninth period, but occasionally they are. The teachers are seeking, except for emergencies, a guarantee of two periods per day free from all teaching and non-teaching duties, in addition to the period for lunch.

In current practice, each Board of Education endeavours to develop and maintain a pool of occasional teachers external to the school. Each principal, as the need arises, hires occasional teachers on a per diem basis, to substitute for absent regular staff if a suitable qualified occasional teacher is available from the pool. The budget for occasional teachers for the year 1975-76 was $1,258,853 and for the year 1976-77, $1,673,449. When a substitute occasional teacher is not available from the pool, the principal usually assigns a member of his regular teaching staff who is free from scheduled classes to provide substitute instruction. What is proposed by the teachers would require additional use of occasional teachers under such circumstances and would add substantially to the budget for occasional teachers.

I appreciate that the teachers feel that this extra period can best be used by them for preparation and other work, and that an occasional teacher may have greater expertise in the particular subject which must be taught by reason of the absence of the regular teacher. It is to be observed that the teacher who was absent is invariably absent with pay. I do not think that such added expense for occasional teachers is warranted for the years under consideration.

Kirkland Lake Secondary, 1975-76 - JOHNSTON - pp. 83-85

The Teachers proposed a new clause which would read "the Board will maintain the teaching load as used in the 1974-75 teaching year for the life of this Agreement." The teaching load was a measure of assigned work load encompassing duties as recognized by the formal designation on a timetable recorded and indexed on the basis of a provincial survey. The Teachers submitted that work load was a term or condition of employment which under Bill 100 was negotiable and pointed to three or four other teacher agreements with similar working condition clauses. The Teachers submitted that work load was a factor that must be considered in connection

with remuneration and that given the fact that the Kirkland Lake Board showed a relatively high work load index compared with other related Boards some guarantee to avoid an increase within the next year and a half was necessary to ensure that quality education be maintained.

The Board responsed that teacher work load had not been a problem (a position reiterated in the Fact Finder's report) and that with an expectation of a continuation in the decline of students at KLCVI there would be no increase in teacher work load. Moreover, the Board submitted that with wage and price control guidelines imposing ceilings on salary increases in the next agreement to be negotiated one might expect that work load would become a matter of very strenuous negotiations, unlike the situation in the past, and should properly be left to be negotiated by the parties who had much more familiarity with the pertinent conditions than would a compulsory arbitrator.

The evidence from the current agreements of the other six boards in the Highway 11 corridor suggests that this issue has not attracted great attention. Four of the six agreements appear to have no such provisions and the other two (Nipissing and Timiskaming) have minimal provisions or letters of intent with respect to class size only.

I accept the Board's postion on this matter. From the evidence available to me, it does not seem that this is an issue of great significance at present and it has not presented any problems in the past. As a practical matter it does not appear to be necessary that the guarantee the Teachers request would be necessary. In the absence of such evidence and given the fact that this has not been a matter that has attracted significant attention by the negotiating parties in the past, I would be reluctant to impose that in the collective bargaining relationship through a compulsory arbitration award.

I conclude that no addition to the current agreement is necessary with respect to Teaching Load.

Wentworth Secondary, 1977-78 - TEPLITSKY - p. 5

P.T.R.

The 1977-1978 agreement included a reduction in the P.T.R. from 17.8 + or -1 to 17.4 + or -1. This recent reduction in the Board's contractual obligations was achieved through collective bargaining and militates strongly against a further lowering of the P.T.R. at this point in time. Accordingly, the agreement for 1978-1979 will contain the same provisions as in 1977-1978 in this matter.

Workload

The present work load provisions first appeared in the 1977-1978 agreement. They were not implemented in 1977-1978 because of the lateness of the settlement. It would be wrong in principal to change those provisions before there is any evidence of their impact on the Teachers, the P.T.R. or the school system. The suggested changes in contractual language are not necessary to achieve the protection the Teachers require. Accordingly, the 1977-1978 contractual provisions will continue in force in this agreement.

CONDITIONS DE TRAVAIL: RAPPORT ELEVES-ENSEIGNANTS/DOTATION EN PERSONNEL

Metropolitan Toronto Secondary, 1975-76 - DUBIN - pp. 57-58

For many years, studies have been implemented to determine the staffing levels for the Metropolitan Toronto school systems. The only issue between the parties is the divisor at the general level. The following divisors are included in the Boards' proposal:

	1975-76 School Year	1976-77 School Year
Advanced Level	20.9	20.9
General Level	20.6	20.0
Shop	15.0	15.0
Occupational	14.4	14.4
Special Vocational	13.6	13.6

The effect of any decrease in the divisor is to increase the number of teachers for the same student population. To give effect to the present proposal of the School Boards based on a comparison of the previous staff allocation formula applied to the 1975 student enrolment would require approximately eighty additional teachers in the year 1975-76 and would require further additional twenty-two for the year 1976-77. By costing the additional staff at 80% of the average salary and fringe benefits, based on hiring practices for the past year, the additional cost for 1975-76 to implement the Boards' proposal would be approximately $1,919,219. The teachers are seeking to reduce the divisor for the general level for 1976-77 from 20% to 19.5% which would require a further additional nineteen to twenty-one teachers. The argument made by the teachers is that further reduction of the divisor is necessary to improve the quality of the teaching function. In my opinion, any further additional cost is unwarranted at the present time. I think the Boards of Education have gone a long way in the adjustments proposed by them to the teacher-pupil ratio, and I would direct that their proposal in this respect be implemented. I also would make no change in the E.S.L. staffing.

Sault Ste. Marie Secondary, 1975-76 - KENNEDY - pp. 20-23

The Teachers proposal for the second year, however, does, in fact, change a provision that is set out as a philosophy into a very specific and definite commitment. Under the Teacher proposal for the 1976/77 school year, the Board is required to exercise its best efforts to maintain class size to specific limits and is further obliged not to exceed within the system a pupil-teacher

ratio of 16.5 to 1. These figures are to be determined as at September 30th in each year. The Teacher proposal further defines all services provided by the Teachers outside of normal classroom hours as voluntary services and prohibits the Teachers being required to perform any unscheduled supervisory duty.

The Board's position is that while class size and pupil-teacher ratios are reasonable objectives in theory, flexibility must be maintained, both in order to meet conditions created by enrolment and selection of course options, and also some compromise may be required on the basis of the cost to the Board in face of the rapidly escalating expenditures required in other areas and, specifically, in the salary area. The Board further indicates that September 30th is not the most realistice date to determine the normal situation with respect to pupil-teacher ratios and class size.

In the context of this Article, there is a direct clash in philosophies between the parties as to what is the nature and appropriate time commitment of a teacher and what is the extent of the Board's rights as management to run the schools. Under The Education Act a Board of Education has some specific duties that it must perform and, further, it has several discretionary rights which it may exercise. The legal status and relationship between a Board and its Teachers and the extent to which a Board may prescribe the hours of a school day and direct the activities of the Teacher are, as questions of law, raised as issues in the litigation presently pending between certain members of the Branch Affiliate and the Board. Because of the existence of this litigation, and the fact that some of the issues of Article 16 are already before the Courts for determination in the context of absolute legal rights of the respective parties, counsel for the Board objected to my proceeding with certain parts of Article 16, specifically, Articles 16.04, 16.05 and 16.09. The position taken by the Teachers was that the litigation merely related to these matters for the current teaching year, whereas the Teacher contract request related to the subsequent year. The Teachers further argued that by virtue of Section 9 of Bill 100, any term or condition of employment is negotiable and that, therefore, the parties were obliged to negotiate the issues raised by Article 16. I readily accept that in normal circumstances, all these matters are properly to be included in the negotiation of a collective agreement under Bill 100. At that point, the issue is not as to the legal rights and obligations of the parties, but rather what constitutes a fairly negotiated settlement between them which may, perhaps, modify acknowledged legal rights. However, when one of the parties is actively asserting in the Courts a declaration as to these rights as a question of law I do not think it appropriate for an arbitrator to impose upon the parties terms on issues that clearly form a part of that litigation.

I have another and more fundamental reason for being reluctant to adopt the Teacher proposal on Article 16 in the circumstances as they appear to me to exist. I have carefully considered the various submissions made to me by the parties in connection with

this Article and I do not feel that this arbitration has been preceded by negotiations wherein either party made serious attempt to appreciate the position of the other and attempt a mutually satisfactory provision. In the material submitted by the Teachers there is a complete absence of any appreciation of the cost factor, whereas it is obvious that a reduction in pupil-teacher ratio or class size will have significant cost results to the Board. Similarly, the Board's attitude appears to me to have been one of management rights and has not recognized that the Teachers do, in fact, have a legitimate and genuine role in the operation of the educational system. The issue was correctly set out by Mr. Forsyth speaking on behalf of the Teachers when, in substance, he stated that the partnership of the Board and the Teachers in running the educational system was not something that was based on ownership or public accountability. Rather, it was a partnership that was based on a need for a cooperative venture in the running of the school system. This would imply to me that the role of a Teacher as a professional must extend beyond mere physical presence in a classroom during the stated hours of teaching time. The issues raised in Article 16 are fundamental to the educational system and the respective positions of Teachers and Boards have been admirably set out by each party to this arbitration in the materials submitted. In my view, however, the parties have not given adequate consideration to the arguments raised on the other side and a satisfactory Article 16 can be achieved only by a blending of what is educationally desirable with that which is practically feasible. Accordingly, for the year 1976/77 Article 16 will continue as proposed by the Board. Arbitration should follow a reasonable attempt by the parties to resolve a dispute and should not be a substitute for such considerations.

Windsor Secondary, 1975-76 - FERGUSON - pp. 17-19

The 1975 agreement requires that the pupil-teacher ratio shall be fixed within the range of 16.5 to 1, to 16.8 to 1. The teachers propose no change in Article 9.01(e), which reads as follows:

> "The Board upon receipt of the recommendation of the Committee in respect of projected enrolment and the allocation of teachers among the schools, shall fix the pupil-teacher ratio within the range of 16.5 to 1, to 16.8 to 1, and shall forthwith notify the Committee."

The Board proposes the application of a P.T.R. at 17.8 to 1 in determining the staff as of September 1, 1976. In making this proposal the Board has considered the effect of establishing the new P.T.R. on class size and on programmes and courses at each school. The Board is assuming that there will be a reduction of fifty teachers, and it is suggested by the Board that the average class size as a result of incorporating the new P.T.R. of 17.8 to 1 would be increased by 1.73 students. During the course of the

arbitration hearings the Federation called as a witness Mr. Roy Battagello, Principal of W.D. Lowe Secondary School. Mr. Battagello has had 23 years of teaching service, 17 years of which have been with the Windsor Board. He is a highly qualified member of the teaching profession who has served as a Vice-Principal for three years, and as a Principal for two years. He is president of the Windsor District Principals' and Vice-Principals' Association. Mr. Battagello stated that the changes in the P.T.R. as proposed by the Board would have a marked, negative effect upon the quality of teaching and that, on educational grounds, there was no justification for increasing class sizes. He further suggested that an increase in the P.T.R. as proposed by the Board would result in a deletion of many option courses as well as the creation of several extremely large classes.

It is my opinion that there is an onus on the Board to adduce evidence to confirm that the quality of education provided for the students will not be detrimentally affected if the proposal of the Board is accepted. When faced with a continuously rising cost of education the Board must be faced with the need to mitigate the effects of these costs without detrimentally affecting the quality of education. However, the Board, in making its submissions to me, did not adduce any evidence that its proposal with regard to an increase in P.T.R. would achieve savings without a detrimental effect on the quality of education in the secondary schools. The evidence given by Mr. Battagello has not been weakened by any other evidence. The evidence before me totally supports the position of the Federation that Article 9.01 should not be amended and I award accordingly.

Peel Secondary, 1976-77 - BECK - pp. 6-12

The first issue to be dealt with is the appropriate pupil staff ratio (P.S.R.) for 1977 and 1978. As to the basic P.S.R. for 1977 and 1978, there is no disagreement between the parties. It shall remain at the present 16.75. There are, however, two issues in dispute with respect to P.S.R. The first is the treatment of special education teachers. In Peel schools, as is true in the other schools throughout the Province, there has been a recent realization of the need for special education teachers to look after a range of problems that arise among the pupils ranging from gifted students, students who need remedial work in English and slow learners. At one time it was thought that the number of special education teachers in Peel would go from the present fifteen in September, 1977 to twenty-two in September, 1978. The issue between the parties is whether the special education teachers should be included or excluded in working out the overall P.S.R. It was the position of the Board that all special education teachers would be excluded in September, 1977 and fifteen would be excluded in September, 1978. Each additional special education teacher added in September, 1978 would reduce the regular teacher allocation by one-half teacher, that is, for every two special

education teachers added, one would be excluded from the P.S.R. ratio and one would be included. Thus, if seven special education teachers were added in 1978, the number of teachers in the entire system would be reduced by three and one-half. It is my understanding that this issue is somewhat academic at the moment and the proposal to increase the number of special education teachers from fifteen to twenty-two in 1978 has been rejected by the Board's budget committee with the result that there is really no issue here between the parties. However, it may well be that additional special education teachers will be added and as it was a major issue between the parties, it should be settled as a matter of principle.

The P.S.R. ratio of 16.75 is arrived at according to the following Staff Allocation Formula.

STAFF ALLOCATION OPERATION FORMULA

Classroom Phase (5)	12,568	-	21.5
Classroom Unphase (9)	8,240	-	21.1
Classroom Phase (4)	3,278	-	19.5
Classroom Phase (3)	195	-	14.8
Shop	2,646	-	15.0
Vocational Academic	913	-	13.6
Vocational Shop	805	-	12.3
Indec	139	-	16.75

It will be seen from this formula that Phase 5, Phase 4, and the unphased classes in the secondary schools have a higher P.S.R. than Phase 3 and the vocational classes. In simple terms, those programs that carry a higher academic content have a higher P.S.R. on the theory that the students in the more intensive academic program function as well in a setting of a slightly higher P.S.R. Those who are in the less academic and in the vocational academic and vocational shop programs require a higher P.S.R. The allocation is worked out by a Staff Allocation Committee which is made up of teachers and members of the Board. It will be appreciated that the distribution is achieved, in the case of a 16.75 P.S.R., by employing separate staff devisers which range from the high of 21.5 for academic Phase 5 to a low of 12.3 for vocational shop classes. While it is clear that P.S.R. has a major effect on class size, it is equally clear that it is not the only factor in determining class size. There are a number of other variable factors. The first is that the staff generated by P.S.R. includes all non-school teaching personnel. A second factor arises from the nature of classes a student elects to take. For example, Latin will always be a very small class - and the more undersized classes there are, the larger some other classes will be. A third factor is the number of credits a student elects to take. Each teacher teaches six credits per year. However, in Peel, because students take an average of 7.5 credits per year, classes are larger than the devisers. If students took 6 credits per year, then the class size would equal the deviser, but this is not the case.

A P.S.R. of 16.75 was established in 1976 and is clearly seen by the teachers as being a matter of very great importance, and rightly so. This is not the place to enter into a discussion of appropriate P.S.R. and the difference that P.S.R. makes in a class. Clearly a great deal will depend on the quality of the teacher, the quality of the students, and the particular subject being taught. Nonetheless, a reasonable P.S.R. is a legitimate goal of both teachers and School Boards and once a reasonable ratio is established there must be very strong justification for increasing it, regardless of in how insignificant a way. The Federation readily admits that the Peel Board compares favourably in terms of P.S.R. with the 20 largest Boards of Education in Ontario. Indeed, its ratio of 16.75 is the third best in the province. To put the matter in more graphic perspective, of approximately 8,500 classes offered in the secondary school system in Peel County, only 155 are classes larger than 35 students. The largest classes in 1976-77 in Phase 5, the phase which has the highest P.S.R. of 21.5, were two of 43, both of which were typing classes in which the teacher has an assistant. The smallest class in Phase 5 was 8 pupils and the average size was 27. In Phase 4, the average class size was 24.5 students, the largest class having 37 students and the smallest class having 8 students. Phase 5 and Phase 4 are singled out because, as noted in the staff allocation formula above, these are the classes which have the highest P.S.R.

The Board argues that P.S.R. and class size in Peel are very good. As the figures show, this is unquestionably true. But the teachers' position is that even one teacher in a school can make a considerable difference -- it can possibly mean that a class of 32 can be changed into two classes of 16, although this clearly won't happen in every case. But the point that the addition of one extra teacher in a school can have an impact on class size is well taken. Moreover, the teachers also make the claim, which on the evidence seems to be true, that the area showing the largest growth is Phase 3, and these vocational areas have a P.S.R. well below 16.75. The effect of this is obvious. But apart from the statistics, the teachers argue that the matter is one of principle. Their argument is simply this. Two years ago, there were two special education teachers, in 1976/77 there were fifteen, and by September, 1978, the Board, if the budget allows, is projecting twenty-two and as many as thirty for the following year. And this is clearly going to continue to be a fast growing area. The teachers are supportive of the hiring of special education teachers, indeed, they have argued for it for a long time. But, as a matter of principle, they say that the addition of special education teachers ought not to be made at the expense of the existing program by taking the special education teachers out of the regular classes which would be what would in effect happen if they were included in calculating the ratio. Moreover, for 1975-76 and 1976-77, the special education teachers were added on rather than being included in the ratio. Now the Board wishes to change its position as it sees the increased growth in special education. The Federation says that if a program of special education is needed, then it ought to be paid for and its real cost ought to be seen. I agree with this position.

Although the numbers are not large, a very small change in the number of teachers can possibly have a significant impact on any one school. Moveover, there is no reason now to change the Board's practice of excluding special education teachers merely because they see growth and, therefore, a greater cost in the special education program. The cost of special education ought not to be paid for by adding those teachers into the ratio of regular teachers. The real cost of special education ought to be seen for what it is. Therefore, whatever numbers of special education teachers are added for the year 1977-78, they should continue to be excluded from the P.S.R. as has been the practice during the past two years and as will be the practice for 1976-77.

The second issue with respect to staffing concerns the opening of a new vocational school in September, 1978. The new North East Brampton vocational school will have approximately 450 students enrolled. Because the vocational school has a lower P.S.R., as noted above, it will cause a drain on the number of regular teachers. This is so, notwithstanding the opening of two new regular schools within the 1977-78 academic year and the growth in the student body. As the Board points out, if the student body is gowing, and more regular schools are being opened, there will be an additional number of teachers available in the regular school system as the greatest number of students are in a Phase 5 and Phase 4 programs where the P.S.R. is over 21 compared to the overall ratio of 16.75. This increase, therefore, must have the effect of offsetting to a certain extent the increased demand for teachers created by the opening of a new vocational school where the effective ratio is approximately 11.19.

The projected enrolment for 1978-79 is 31,561 students. When this figure is divided by the normal ratio of 16.75, it generates 1,884.24 teachers. The opening of the new vocational school, where an effective ratio of 11.19 is applied, would mean that a total of 1,890.75 teachers would, in effect, be required over the whole system. With a cap of 1,884 teachers, the result is that 6.5 teachers are taken out of the regular system by virtue of the opening of a new vocational school. The Board argues that this is a temporary phenomenon. At present, it plans to open two new regular schools in Peel each year with the improvement in the ratio that this brings as noted above; that the P.S.R. and class size in Peel is already very good; that moving to a 16.75 ratio in 1975-76 cost the Board one million dollars and there is no need to engage an extra 6.5 teachers in the 1978-79 year because of the opening of one more vocational school. The Board also argues that there is a beneficial effect on the regular classes, although not easy to measure, by the taking out of the regular classes those students who ought to be in vocational schools and that this more than compensates for the six teachers taken out of the system. The teachers, on the other hand, argue that the loss of the six teachers to staff the new school is a very real loss and they make the same argument that is made with respect to special education teachers, - that is the P.S.R. of 16.75 is something that ought not to be diluted by the addition of either or more vocational schools or special education teachers. If in 1978-79, a new vocational school is to open and is to have the effect or withdrawing 6.5 teachers from the regular schools, then that is a cost that the Board must bear in accordance with the P.S.R. that has been worked out and agreed to. It seems to me that once again on balance the teachers have the better of

the argument on this point. There is no question that the figures indicate that there is a real cost in terms of teachers taken out of the regular system by the opening of the North East Brampton Vocational school in 1978, based on what the total projected enrolment will be in that year. This is not a recurring item but is only an item for 1978-79 and for that year an additional six teachers should be added to whatever figure the 16.75 ratio indicates is the total number of teachers required as of September 30th, 1978.

Durham Region R.C.S.S., 1976-77 - KENNEDY - pp. 8-10

The previous Agreement between the parties provided in substance that the number of staff assigned to any school was determined on the basis of the number of students in the school divided by twenty-five. However, in calculating the number of students in the school, each student who was enrolled at the primary level counted as 1.2 students for the purpose of determining the number of staff to be assigned. The contract went on to provide that at the primary level, this should result in about twenty-five children in each class; whereas the junior/intermediate divisions would have about thirty students in each class. The policy originated as the result of a report completed in November of 1974, which report was prepared by a committee of the Board's administration and principals and vice-principals within the system. The report purported to reflect a concern for the child's early years of elementary school education and the result of the implementation of the report would be smaller class sizes at the elementary level. The clauses were included by the parties in the 1975 Collective Agreement and remained unchanged during the 1976 contract. It is the Teacher proposal that the clauses be maintained in the current contract with the same weighting factor of 1.2 being applied to the elementary enrolment in determining the number of staff to be assigned to every school. It is the Board position that from an educational point of view, the necessity or wisdom of a weighted primary enrolment factor is not established, and that therefore there should be no special weighting for elementary pupils in determining the staff to be assigned to the schools.

This aspect was extensively argued on the Hearing and in the Briefs and replies submitted by the parties and it is fair to say that the argument of the parties has been directed primarily to the quality of education aspect of this particular problem. The attention of the Board of Arbitration was drawn to numerous reports which attempt to consider whether or not class size can be demonstrated to be a significant factor in achieving educational quality and whether or not a reduction of class size particularly at the younger levels would be effective in improving educational achievement. The consideration of the various reports and studies to which we were referred would indicate that the results in this area are inconclusive and that there are factors other than class size that are more determinative of educational achievement. A

weighting formula as contained in the prior two Agreements between the parties is a significant cost item. Reference has already been made to the cost problems being experienced by Boards of Education with respect to expenditures in excess of grant ceilings and the particular impact of this type of problem on separate school boards. In these circumstances, it is only reasonable to conclude that the expenditure of funds to maintain the weighted primary enrolment factor at the status quo cannot be justified based on the evidence presently available. The staff report which was the source of this clause was prepared at a time when provincial contributions to educationsl cost proceeded on a significantly different basis than at present. When it becomes necessary to balance a possible potential educational benefit against a very real problem of cost, it is reasonable to give way to the economic reality of the situation. This matter can again be considered by the parties at any time in the future should either the cost situation improve or the evidence that would justify the weighting factor become more conclusive.

Wentworth Secondary, 1977-78 - TEPLITSKY - p. 5

P.T.R.

The 1977-1978 agreement included a reduction in the P.T.R. from 17.8 + or -1 to 17.4 + or -1. This recent reduction in the Board's contractual obligations was achieved through collective bargaining and militates strongly against a further lowering of the P.T.R. at this point in time. Accordingly, the agreement for 1978-1979 will contain the same provisions as in 1977-1978 in this matter.

Workload

The present work load provisions first appeared in the 1977-1978 agreement. They were not implemented in 1977-1978 because of the lateness of the settlement. It would be wrong in principle to change those provisions before there is any evidence of their impact on the Teachers, the P.T.R. or the school system. The suggested changes in contractual language are not necessary to achieve the protection the Teachers require. Accordingly, the 1977-1978 contractual provisions will continue in force in this agreement.

Kirkland Lake Secondary, 1978-79 - BURKETT - pp. 2-5

In this round of negotiations the external factors of a weak local economy and a declining student population combined to polarize the positions of the parties in the areas of job security, management rights and compensation. The teachers, having regard to these external factors, feel themselves vulnerable in the area

of job security and seek to have a fixed workload and pupil teacher ratio included in the collective agreement. The teachers also seek to lower the pupil teacher ratio which is now unilaterally set by the School Board. The Board, on the other hand, seeks to maintain as much flexibility as possible in order to deal with the effects of the eroding tax base and declining student enrolment on the education system.

The Board presently has the flexibility to unilaterally set the pupil teacher ratio and to assign workload to individual teachers. The pupil teacher ratio set by the Board is not out of line with provincial averages although slightly higher than those which exist in the "corridor" boards. The individual teachers workload figures are also in line by comparison. We are not satisfied, therefore, that the teachers employed by this Board are grossly overworked as would justify a significant reduction in the pupil teacher ratio. Indeed, to significantly reduce the pupil teacher ratio would leave the teachers open to a charge of "featherbedding". On the other hand there is nothing to suggest that the teachers in this Board do not work at least as hard as those in other Boards across the Province. We are satisfied, that this Board has been and continues to effectively utilize its teachers and accordingly, we start from the position that the present measures of complement and workload as determined by the Board provide for the maximum utilization of teachers within the local context.

The more difficult issue in our view is whether or not to include these measures in the collective agreement. If the pupil teacher ratio is included in the collective agreement the number of teachers employed by the Board will decline in direct proportion to the decline in the number of students. The result, therefore, will not be to artificially maintain jobs which would otherwise be lost through declining enrolment but rather the result will be to provide teachers a measure of insulation from unilateral decisions to reduce staff beyond the levels dictated by declining enrolments. Fixed pupil teacher ratios appear in more than 50 per cent of the teacher school board collective agreements in the Province of Ontario. Having regard to the political pressures generated by an eroding tax base we are of the view that the teachers employed by this Board, as with the teachers covered by those agreements which contain a fixed pupil teacher ratio, should not be faced with the uncertainty of unilateral decisions to reduce staff levels below those required by declining enrolments. Rather, taxpayers and teachers alike should conduct themselves in the knowledge that these types of decisions must ultimately become the subject matter of collective negotiations between the Board as representatives of the taxpayers and the teachers.

Having decided that a fixed pupil teacher ratio should be incorporated into the collective agreement we have not been convinced of the necessity to award that a fixed workload formula also be included in the collective agreement. There is no evidence that the Board has grossly overworked its teachers in the past and in the face of a fixed pupil teacher ratio the possible option of increasing the workload of some teachers to facilitate the layoff of others has been removed.

Muskoka Secondary, 1978-79 - KENNEDY - pp. 2-10

This Board of Arbitration has been constituted to resolve a single issue between the parties with respect to the Collective Agreement to be in force for a period September 1st, 1978 to August 31st, 1980. By a Memorandum in writing dated February 22nd, 1979, the parties resolved the terms and provisions of the Collective Agreement and specified therein in Article 13 as follows:

> Article 13. - Status of PTR Clause.
>
> The Parties to this negotiation agree, subject to the approval of the Federation membership and the BOARD, that the matter of the inclusion or exclusion of a clause on Pupil-Teacher Ratio in the Agreement, or, a statement maintaining a BOARD Policy on Pupil-Teacher Ratio for the duration of the Agreement, be submitted to binding arbitration at the completion of negotiations if agreement has been reached on all other outstanding items including the wording of a Pupil-Teacher Ratio clause or policy. The form of binding arbitration will be mutually agreed and indicated by the Parties within fourteen days of the signing of the Collective Agreement by both Parties.

The parties did reach agreement on all other outstanding items, including the wording of a Pupil-Teacher Ratio Clause or policy; and by letter dated April 20th 1979, I was appointed as Chairman of the Board of Arbitration constituted by the parties. It is common ground between the parties that our function is to select one of three possibilities, namely:

1. Include in the Collective Agreement the clause on Pupil-Teacher Ratio in the terms agreed to between the parties;

2. Include in the Collective Agreement a statement maintaining that clause as a Board Policy for the term of the Agreement;

3. Direct that the Agreement should be silent with respect to a Pupil-Teacher Ratio.

The Teachers propose the first of the above-noted provisions, whereas the Board favours the third.

With reference to the foregoing choices we can, as an initial matter, reject the second. The legal effect of such a provision would be to incorporate by reference into the Collective Agreement another document; and, in such circumstances, there is always the potentiality of problem in determining exactly what has been incorporated and to what extent. As a simple principle of contract drafting and interpretation, we much prefer that the respective

rights and obligations of the parties be expressed within the four corners of the contract; and if there is to be a contractual obligation with respect to PTR imposed upon the Board, it should be an integral part of the Collective Agreement. The use of incorporation by reference of Board policies in Collective Agreements may well find its origination in the philosophy that a provision in the Collective Agreement is more difficult to change in subsequent negotiations than is a matter of Board policy. I think in substance the only real difference is really one of onus. If a Board policy is changed contrary to the wishes of the Teachers then the onus will be on the Teachers in the next set of negotiations to attain a desired change. If the matter is a subsisting provision of the Collective Agreement, then it will be the Board that is required to seek a change. It is becoming more and more recognized that, as parties become more sophisticated in Teacher/Board negotiations and the ambit of areas subject to the mutual review of the parties widens, this aspect of onus is becoming less important than it may at one time have been; and it is more a matter of each party determining its priorities in bargaining the various areas in dispute between them. It is therefore firmly our view that if there is to be an obligation and a responsibility on either party, it should be so expressed in the Agreement and be subject to continuous review in the process of free collective bargaining.

As a preliminary matter, we would also note that there was some discussion on the hearing as to whether, in fact, the issue of a PTR clause was a proper subject matter for negotiation, or whether it was, in essence, a prerogative of the Board and the electorate to which it was responsible. We are satisfied that a provision with respect to PTR is a term or condition of employment in the sense of both work load and job security, and that by virtue of Section 3 of The School Boards and Teachers Collective Negotiations Act, 1975, the inclusion or exclusion of such a provision put forward by either party is a proper matter for negotiations under the Act and for determining by arbitration as provided in the Act. The quality, the Teacher brief placed extensive reliance on recently published material gathered by Gene Glass and Mary Lee Smith of the University of Colorado in the course of a project in class size and instruction in which they participated. The Teacher brief included materials with respect to that study which came to the general conclusion that student achievement increases as class size is reduced. The study did indicate that the advantage was much greater when the class size was reduced below 15, and that for reduction in size of classes from say 20 to 25, there would only be a small difference in average achievement. In the context of Muskoka, it would appear that class sizes in this latter category are the ones that are relevant and that therefore for our purposes the results of empirical studies into the class size question continue to be inconclusive; and there are other factors that are more determinative of educational quality.

The Board argument stressed the concept that class size and PTR was a matter of public policy and should be determined by all residents of Muskoka. It was argued that it was inconsistent for the Teachers to be involved in negotiating a matter of policy in which they had a significant and direct personal

interest in the outcome. It was felt that by enshrining a PTR into the Collective Agreement, the Board's flexibility to deal with situations as they arose would be impaired, and that while the Board was prepared to recognize in its policy an agreed PTR level for September 1st, 1979, it desired to retain control over future changes in this area. The board argued that because agreement had in fact been reached as to the policy for the coming school year, there was no existing need to which the Collective Agreement should respond, and that whatever the past history had been, the problem was now resolved between the parties. The Board also suggested that if we were to grant such a clause, we would, in essence, be leading the way in this area rather than following the general trends of free collective bargaining.

We are not prepared to accept the proposition that by granting such a clause we are in any way being innovators in the area of Teacher/Board Collective Agreements. Statistics published by the Education Relations Commission would indicate that for the contract year 1978-79, some 32 out of 63 secondary school Teacher Agreements filed contained a provision with respect to PTR, and of those 32 contracts, 31 of the provisions were mandatory. Approximately one-half of the Agreements in force, therefore, would appear to have comparable clauses to that which the Teachers request on this Arbitration.

We are also unable to accept the Board proposition that to include a clause on PTR is to derogate from the authority of the Board and the electorate to determine educational policy. As stated previously, the issue is one not only of educational policy, but it is one of work load and job security, both of which are recognized as appropriate negotiating areas for Teacher contracts. The inclusion of the PTR clause in the Collective Agreement does not mean that the number assigned to the PTR becomes any more sacrosanct than any other term or condition of the contract. Rather, any changes in that number will be the subject of negotiation and discussion between the parties, and in the course of those discussions, it is a responsibility of the Board to represent the interests of the electors in settling the issue of policy. In our view, the issue is much more likely to get a full and fair consideration in that manner than if it is relegated to being an administrative function of the Board wherein changes can take place before the parties are in fact aware of the change or given an opportunity to comment on it. The electorate has exactly the same opportunity of expressing its views as to the Board's achievements at the negotiating table as it has with respect to all other Board activities and policies.

We find further support for our view that the clause is appropriately included in the Collective Agreement by virtue of the very fact that the parties have been able to agree on the content of the clause and what the policy should be for the coming year. As stated previously, when there is agreement, it is our view that it ought to be specifically expressed in the document that is executed by the parties; and since they are clearly in agreement on the substance of the clause, its proper place is in the Collective Agreement.

We find it interesting that neither party in the presentations dealt with the monetary aspects of the PTR issue. It is self-evident that a reduction in the PTR is obviously going to require the expenditure of additional funds on the part of the Board. It is widely recognized by arbitrators in the context of collective bargaining, that individual contract items cannot, in most instances, be looked at in isolation separate from the issues of total compensation and the total package of benefits and working conditions provided for in an Agreement. It is clear that a PTR clause has monetary significance to the Board and has, as a minimum, work load and job security significance to the Teachers. We, therefore, consider it unrealistic to say that all other provisions with respect to employment should be covered in the Collective Agreement, but that that single aspect is, somehow, in a different status to be dealt with in a different manner. We are unable to accept that there is any substantive difference between a PTR provision and any other term or condition of employment in the collective bargaining context. In the future, when the parties consider changes in the PTR number, it would be more appropriate that the overall effect of any such change be considered in conjunction with the balance of the contract, and in light of the priorities of the parties. For example, it may well be that as job security becomes an increasingly significant issue, it may be in the interests of the parties that rather than monetary increases, the parties would be better off with a reduction in a PTR.

Based on the material which was presented on the hearing, we are satisfied that the Teachers have demonstrated a need that the clause be included. It has been established that the substance of the provision will create no problems, and that this has been an issue between the parties for a long period of time, the resolution of which, they have both agreed should be submitted to arbitration. The job security feature of acquiring an upper limit on the PTR is obviously going to become more significant in the years immediately ahead and may, indeed, create specific problems within the term of this Collective Agreement. It is quite true that if the PTR is, in the future, altered in a manner which the Teachers consider to be detrimental, it can, at that point in time, be made the subject matter of negotiations; but that would be too late for any existing members who have become redundant in the interval. We believe that the Board argument in this area confuses demonstrated need with immediate need, and while a surplus problem is not yet a reality in Muskoka, it has been demonstrated that it will be in the very near future. In those circumstances, therefore, we think the appropriate time for the parties to consider the issue is the point in time where it has been demonstrated that there is a potential real issue to determine.

We would also like to point out that in reaching the foregoing conclusion, we are not making any positive finding as to what the PTR number should, in fact, be. That level has been agreed upon between the parties, and no arguments were addressed to us on that aspect of the matter. Our finding is limited to a determination

that a PTR clause is the proper subject matter for negotiations between the parties and ought, properly, to be included in the Collective Agreement between these parties. We are not saying that the specific number which the parties have agreed is, in any way, sacrosanct, and that it should not be subject to negotiated change in the future based on all conditions as they then exist.

Sault Ste. Marie Secondary, 1978-79 - DOWNIE - pp. 21-25

This is perhaps the most complex issue of the arbitration and the one of most concern to both parties. Further, it is critically important as far as their relationship is concerned. Article 16.01 states:

> The Board agrees that the following maximum class sizes are desirable to ensure educational opportunity in good teaching and learning effective September 1978:
>
> | | |
> |---|---|
> | Academic | 30 students |
> | Academic, General | 25 students |
> | Technical | 20 students |
> | Commercial | 30 students |
> | Occupational, Academic | 20 students |
> | Occupational, Technical | 15 students |

This was one of the original items in dispute but, as stated earlier, at the hearing both parties proposed the same wording for 1978-79 and 1979-80 and agreed that the item no longer was in dispute. The Teachers noted that 16.01 is a statement of an educational objective and that, by itself, it would be extremely difficult to enforce Board compliance with the maximums. The clause would simply provide direction with respect to a desirable course of action.

In the last set of negotiations article 16.02 was negotiated into the collective agreement. This article sets a maximum work load for teachers in terms of the number of students taught. That is, it approaches the question of work load from the standpoint of total number of students taught rather than from the use of a pupil/teacher ratio (P.T.R.). It states:

> The teaching load of any teacher shall not exceed the sum of the applicable objective class sizes found in 16.01 (above) for the classes to which the teacher has been assigned in any semester.

The Board is concerned with the cost impact of the article. At the beginning of negotiations the Board apparently requested that the clause be deleted. During negotiations and at arbitration in order to gain more flexibility in approaching the staffing problem they instead proposed the following:

> The teaching load of any teacher shall not exceed by more than 10% the sum of any of the applicable objective class sizes stated in 16.01.

The Board acknowledges that the parties freely negotiated 16.02 into the collective agreement in the last contract round. They feel, however, that it is doubtful either side "anticipated the impact it would have on staffing, particularly as enrolment began to decline in some schools, student population shifted and subject demand fluctuated from subject area to subject area".

The problems that the Board faces in the area of teacher staffing are clearly severe. It comes down to being forced to add staff to meet the requirements of 16.02. This, of course, is costly. Staff unquestionably have had to be added to avoid staff overloading beyond the limits of 16.02. The problem is apparently the most severe during the month of September because student enrolment is highest in that month. Thereafter enrolment drops and the problem dissipates. However, the Board makes the point that if the system is staffed for a peak period to meet the wording of 16.02 there will be "under-utilization" of the same teachers for the remainder of the year. For 1978-79, the Board indicated that an additional 5.5 staff had to be hired in a year when enrolment is steady or slightly declining.

The Teachers oppose the proposed change. Their basic argument is that the clause was freely negotiated and changes should be introduced only through mutual agreement. They claim, contrary to the Board's position, that 16.02 was agreed to in collective bargaining with a full understanding of the consequences.

> We should...emphasize that this article was agreed to in collective bargaining after thorough discussion of the effects and implications that this might have on the school system. It was not imposed and it was not agreed to under the threat of sanctions.

They note that the article is inflexible in the sense that it places a limit on the maximum number of students a teacher will be responsible for during any semester. But they point out that the individual class sizes in 16.01 can be exceeded as long as a teacher's student load does not exceed the aggregate maximum. Finally, they assert there may be other solutions to the Board's problem that have not been explored.

I have great sympathy for the Board's problem in coping with Article 16.02. With all respect, however, I must disagree with the Board on this matter. The above quote from the Teachers' Brief makes a very important point. The clause was freely negotiated into the collective agreement in the last round. With respect to this point, I believe that the parties must have known the major implications of article 16.02, if not in detail then in broad terms. I inquired of the Board whether the impact of

16.02 would have been the same in 1975 or 1976, years just prior to its insertion in the agreement, as it was in 1978. They replied in the affirmative.

I have stated on a number of occasions elsewhere that when established in this manner, i.e., through negotiations, working conditions provisions should only be changed for very persuasive reasons. One of the reasons for so holding is that trade-offs are involved in bargaining. The Teachers put the point well in their brief.

> We have shown earlier that the Teachers achieved only a modest increase in grid salary last year but were satisfied that their major objective in terms of workload had been achieved. In that sense, they therefore "bought" Article 16.02 with their grid dollars.

I am convinced as well that there may be other solutions to the Board's problem. In their brief, the Board indicated that flexibility is required on the matter of workload so that the following may be achieved:

a) Students seeking registration are not denied placement in a section because a teacher's workload has reached a stated limit.

b) The peak registration period of September and October can be accommodated.

c) Fewer teaching reassignments need to be effected.

d) Fewer adjustments need to be made to student timetables thereby minimizing disruptions to programme.

e) Students can reamin in home school areas in the programmes of their choice.

The Board's concern is obviously with the student. This is commendable but it may be that, in an era of restraint, curricula should be re-examined, options reduced, administrative staff put back in the classroom, and so on. Certainly the solution should not rest exclusively with teacher workload.

For these reasons I reject the Board's position on the matter and therefore my award is that 16.02 remain unchanged in 1978-79 and 1979-80.

North York Secondary, 1979-80 - TEPLITSKY - pp. 10-12

The Branch Affiliate submitted that additional Teachers were necessary in the areas of Shop, Occupational and Special Vocational, Local Programs, French as a First Language, Junior High Schools, Special Education and English as a Second Language, both because the quality of education was suffering under the present staffing formula and because Teacher workload was adversely affected by the reduction in staff brought on by declining enrolment.

No useful purpose would be served by a detailed analysis of the material and arguments which were presented. Suffice to say, the Teachers are seeking changes to the staffing formula and have the onus of persuasion on the preponderance of the credible evidence that such changes are necessary. That onus was not met in this arbitration. Not a single witness was called to testify on either the issue of "quality of education" or "workload". The Branch Affiliate made allegations which the Board denied. Very often I was placed in the impossible position of having to choose between an allegation and a denial, neither of which was supported by any evidence. On more than one occasion during the mediation and the arbitration, I drew to the attention of the parties this paucity of evidence. I alerted them to the fact that an arbitrator can only act on evidence and that without evidence, a party will fail on any issue in respect of which he has the burden of proof. Nevertheless, virtually no evidence was adduced before me.

Some statistics on class size were presented by both parties which were relatively the same. These statistics, however, do not prove what the Branch Affiliate sought to prove. Class sizes viewed over a perspective of the last 4 years, have not been increasing, although there are some instances of increase and some of decrease. In any event, I am not prepared to draw the inference, absent other evidence, that relatively minimal increases (often less than 1 student) or decreases (often less than 1 student) in class size, have any effect on the quality of education or on the workload of Teachers. In the result, I would not, based on the main thrust of the Branch Affiliate's presentation, make any changes to the staffing in North York. However, based on relevant comparables and certain concessions by the Board, some staffing changes are appropriate and I propose to outline these.

LOCAL PROGRAMS:

In the M3 Agreement and in the recent med-arb with the Borough of York, this line in the formula was increased from .4% to 1%. A similar change should be made in North York and I so award.

FRENCH AS A FIRST LANGUAGE:

There was some evidence, albeit minimal, of need for additional Teachers at Etienne Brule. Accordingly, I award two (2) Teachers for 1980-81 and a further two (2) Teachers for September 1, 1981. Appropriate line changes in the formula are included in the Collective agreement.

JUNIOR HIGH SCHOOLS - LOCAL PROGRAMS:

The Board agrees that there should be some recognition in the formula for Grade 9 students in the Junior High Schools. Accordingly, I would add a line to the formula of Local Programs in Junior High Schools with a divisor of 1.5% effective September 1, 1980.

Kirkland Lake Secondary, 1981-82 - BARRETT - pp. 30-32

Considerable evidence and argument was presented at the Hearing and in the written briefs both for and against the Teachers proposal to include a class size provision in this clause. At present the clause specifies a Pupil-Teacher ratio of 17:1 and was arbitrated into the Agreement in 1979, at the request of the Teachers.

The Teachers' new proposal would restrict the number of students in different types of classes; restrict the class period length; reduce the Pupil-Teacher Ratio; and set a separate Pupil-Teacher Ratio for Ecole Secondaire Jean Vanier. It would further restrict the number of consecutive teaching periods and number of class periods per day. It would also limit the teaching assignments of those people who hold positions of responsibility and provide that teachers not be required to supervise in the halls and cafeteria; and fix a formula for the allocation of librarians.

These types of provisions do exist in secondary school contracts and we can understand that they would not be unduly restrictive in large Board jurisdictions where transfers of teachers and students between schools is possible. K.L.C.V.I. is a composite school which offers a wide diversity of programs and serves a wide geographic area. It is, in effect, "the only show in town" for students in that geographic area. The Board is attempting to maintain a wide diversity of programs within the constraints of declining enrolment. Although conflicting evidence was presented, we are persuaded that the adoption of the Teachers' proposals would require the hiring of a number of additional staff or the cutting of certain programs and courses offerings. A few instances of excessively large class sizes were cited and we think that both parties agree that that situation is not desirable for the students or the teachers. We were not persuaded however that there was any real hardship involved for the teachers or the students that would require the inclusion in the contract of these restrictive clauses. The fixed Pupil-Teacher Ratio is an effective governor of any unilateral action by the Board to increase class size unrasonably. Although the P.T.R. is set at 17:1 it has in fact always been below that in practice. As of October, 1981, the P.T.R. for K.L.C.V.I. stood at 16.68:1; and for Ecole Secondaire Jean Vanier at 12.08:1. Both parties agree that separate P.T.R.s should be established for the two high schools and that the P.T.R.

for E.S.J.V. should be substantially lower than that for K.L. C.V.I. The Board offered to fix the P.T.R. at E.S.J.V. at 14:1, and that appears reasonable. The Teachers say that if the Pupil-Teacher Ratio for K.L.C.V.I. was reduced to 16:1, as they request, it would require the hiring of three additional teachers. The Board is not prepared to reduce the P.T.R.; however, it is prepared to amend the formula by which P.T.R. is determined by deleting the principals from the calculation, thus effectively requiring the hiring of one additional teacher. In return for this concession the Board would like an amendment to the Tenure Clause, Article 10, provided that principals not be subject to the redundancy provisions. This appears to be a reasonable proposal and in fact was not opposed by the Teachers. That is not to say that the Teachers accepted this proposed provision by the Board as a trade-off for the class size and staff allocation provisions. However the elimination of the principal of K.L.C. V.I. in the calculation of P.T.R. would effectively reduce the P.T.R. to 16.74:1 as an upper limit and would create a P.T.R. within the existing school population of 16.5:1. We are not prepared to award any greater improvement in this clause.

Accordingly it is awarded that Article 27.01 be amended to read: "The Board shall establish a Pupil-Teacher Ratio which will not exceed 17:1 for K.L.C.V.I. and 14:1 for E.S.J.V., as of September 30th of each school year. This ratio shall be determined by actual full-time equivalent enrolment divided by the actual full-time equivalent certified staff, but excluding the principals."

SURNOMBRE/EXCEDENT

Sault Ste. Marie Secondary, 1975-76 - KENNEDY - pp. 18-20

This Article, relating to the rights of seniority of Teachers and the rights of Teachers who become redundant to the Board's requirements, is quite lengthy and, in point of fact, I must confess to having had difficulty in isolating the actual areas of dispute between the parties. There are numerous minor differences in wording which would have been resolved by the parties if they had been considered in an atmosphere other than that which existed in the course of negotiations and activities leading up to Bill 52. I discern that the differences of substance between the parties on this clause are as follows:

(a) The Teachers propose that everyone on contract with the Board shall have the rights conferred by this Article, whereas the Board's position is that these rights will be given only to Teachers on permanent contract.

(b) The Teachers propose provisions relating to the form of contract and the period of employment subsequent to which a formal contract must be executed, which the Board considers adequately to be provided for in existing statutes and regulations.

(c) The Teachers propose the establishment of an implementation committee, the purpose of which would be, according to the Teachers' Brief, to ensure that Teachers understood the options available under the contract.

(d) The basic minimum protection offered by the Board's proposal is one (1) year as a permanent supply Teacher, or a termination allowance of between 10% and 30% of basic salary, whereas under the Teacher proposal, the minimum protection would be 30% of basic salary, or appointment as a permanent supply teacher for a period of two (2) years provided the Teacher can provide evidence of an attempt to retrain.

I will deal with these four points in order:

(a) If there is to be any substance at all to the difference between a probationary contract and a permanent contract, both of which have specific statutory recognition, then it must rest in the principle that the Board can terminate without further obligation and without reasons a probationary contract in accordance with its terms. I do not, therefore, think it i realistic that for the purposes of a surplus teacher provision in a collective agreement there be no distinction between a Teacher on a probationary contract and a Teacher on a permanent contract. Accordingly,

on this aspect of the matter I concur with the reasoning advanced by the Board.

(b) The Board's position that the substantive provisions of Article 15.02 of the Teacher Proposal are already covered by regulation under The Education Act appears to me to be correct and such provisions are unnecessary and inappropriate to a collective agreement. In the event that the Teachers consider the Board to have violated the regulations in that area, then the appropriate remedy would be under the provisions of the Statute.

(c) The Teachers in both the Brief and the reply state that the function of the proposed committee is not to make recommendations to the Board but rather to ensure that the options available to a Teacher are explained clearly and fairly. If that is the case, it is quite open to the Branch Affiliate of the O.S.S.T.F. to establish such a committee on its own for its members and I would hope and expect that if such a committee requested input from the Superintendent of Academic Personnel or from any other Board official, same would be readily forthcoming.

(d) The material submitted by the parties establishes that in the past the Teachers have not suffered as a result of declarations by the Board as to the existence of surplus teachers. While that is not to say that this problem may not arise at some time in the future, I do think it is fair to evaluate this as a potential area of problem rather than actual one. The Board's proposal is, in my view, a reasonable one when compared to the surplus teacher provisions that are in force in other jurisdictions. I think, however, that the severance allowance provided for in Article 15.08(b)(1) should be a straight 30% of basic salary rather than the sliding scale to 30%.

As mentioned earlier, there are differences of wording and terminology between the two proposals and, on balance, I would prefer the wording of the Board proposal in those areas. Accordingly, it is my Award under Article 15 that the proposal as submitted by the Board be accepted subject to the amendment of the severance allowance to a flat 30% of the basic salary rate.

North York Secondary, 1979-80 - TEPLITSKY - pp. 14-15

The present clause, were it to be continued as was suggested by the Teachers, provides more than tenure, as that expression is ordinarily used in education. It provides a job guarantee. Tenure protects a person who has acquired it from dismissal without just cause. In fact, all permanent contract Teachers have tenure because a Board of Reference will not sanction a discharge absent proof of just cause. Job guarantees are not a feature of Collective Agreements in either the public or private sector. The Teachers should not be asked to subsidize the community by

accepting terms and conditions of employment which are sub-standard. Similarly, the public should not be required to subsidize Teachers by continuing employment after a position has ceased to exist. I am not suggesting that short-term benefits for individuals to help reduce the trauma caused by dislocation are not appropriate. Obviously, these are; however, a long-term job guarantee in my opinion, cannot be supported. It is my award that this clause be removed from the Collective Agreement.

Canadian Forces Base Petawawa Secondary, 1980-81 - *MacDOWELL* - *pp. 22-2*

The employer proposes a new provision, the principal feature of which is to permit it to notify teachers as late as November 30th, of their redundancy effective December 31st - that is, some four weeks later. The employer's submission did not make clear the extent to which existing D.N.D. policies (which, of course, are subject to change) or its own existing procedures might cushion the effect of such declared redundancy, and it appears therefore that a redundancy declaration could result in a termination in the middle of the school year. There is no equivalent clause in the Renfrew agreement, nor could the employer draw the Board's attention to any other agreements which had such a provision. (The situation at other military bases would have been most instructive in this regard). It was also conceded that the decline in enrolment had "bottomed out", and was unlikely to continue. Interestingly, and in contrast to its position on other items in dispute and the thrust of the D.N.D. guidelines, this item was pressed on the ground that the situation on the base was really <u>quite</u> different from that of Renfrew - yet there were no indications that such provisions exist in other D.N.D. facilities where, presumably, the same problems exist. If there were evidence of that, the Board might well take a different view, but on the basis of the evidence before us, we cannot accept the employer's position on this issue. We do not think the evidence supports any change in the status quo.

Kirkland Lake Secondary, 1981-82 - BARRETT - pp. 19-21

The existing Tenure Clause was arbitrated into the Agreement in 1979 by Kevin Burkett, largely in response to Teacher requests. The Teachers now propose dramatic changes in this clause primarily in the area of layoffs due to redundancy. Their new clause as drafted would require the Board to lay off the least senior person on staff when a redundancy occurs regardless of his or her qualifications. Only in the event of two teachers having equal seniority would the Board then be allowed to look at qualifications. The Teachers say that their proposal is the only "objective"

criterion for the layoff of staff and that the existing clause which allows the Board to consider "experience, qualification and suitability for alternative posting" gives rise to subjective evaluations of staff members. The Board is appalled at the thought of having to retain on staff a teacher unqualified to teach a particular subject, while letting go the qualified teacher. The Teachers acknowledge that this could be a problem but say that the Board could simply hire an additional qualified teacher from the surplus pool. In effect then, the Board would be left with one unneeded teacher on staff. In a small Board jurisdiction such as Kirkland Lake with fewer than 1300 students and only 78 teachers on staff, flexibility in staffing must be reserved to the Board to allow it to maintain as many course offerings as possible. The position taken by the Teachers is unreasonable and will not be awarded.

In addition to the seniority provisions the Teachers also propose a clause stating that the Board shall employ one full-time supply teacher who shall be the most senior person in the surplus pool. As mentioned earlier, the practice of the Board is not to employ a supply teacher for the first day of a teacher's absence. When supply teachers are hired, presumably one who is qualified in the specified area is employed. This proposed clause would not be advantageous to the efficient management of the schools and is simply put forward in order to help stem the tide of job redundancy. We therefore award that this clause not be included in the Agreement.

Under the existing Agreement, a teacher who is laid off due to a redundancy may remain on a recall list for a period of three years, and if re-hired, retains all rights to cumulative sick leave and the retirement gratuity. In the alternative, the teachers may opt for a severance allowance equal to 4% of their annual salary for each year of service with the Board to a maximum of $5,000.00. A teacher accepting this severance pay relinquishes all rights on the recall list.

The Teachers propose to amend this clause to allow them to stay on the recall list for up to three years; then opt for the severance allowance if no job becomes available. They also wish to raise the maximum amount payable to $6,575.00 and in addition to preserve all recall rights, even though employed by another Board of Education during the three year period. This Severence Clause was arbitrated into the Agreement in 1979 against the Board's objection. We can see no reason to dramatically improve the clause by this Arbitration Award. It seems reasonable that the acceptance of a severance allowance should finally determine the obligations of the Board toward that teacher and that a time limitation be established for the teacher to make the election. In the existing Agreement there is no such limitation. We do not intend to impose a time limit in this award because we have no evidence on which to base a rational decision. This is a matter for negotiation between the parties.

ECOLE DU SOIR/ETE

Niagara South Secondary, 1976-77 - KENNEDY - pp. 10-11

On this article, the Teachers request payment on the same scale as the grid for participation in summer school and night school teaching of credit courses. This Artibration Board is impressed with the Board's arguments that such pay scales could seriously jeopardize both programmes under present financial conditions. We also accept the Board's argument that the Teaching situation in summer school and night school is not a direct parallel to the regular teaching situation, so as to warrant an identical pay scale.

The Board of Education did argue that any provision in this area was outside the provisions of the School Boards and Teachers Collective Negotiations Act, 1975, and that therefore any inclusion in the Agreement was inappropriate. We do not concur with that view and we consider the provisions of the said Act to be sufficiently wide to permit Teachers to negotiate such rates at least insofar as they apply to members of the Branch Affiliates involved. On the basis of the material that has been submitted to us by the parties, we do not propose to make any Award with respect to the night school programme as it is already in operation and its basis effectively established for the term of this Collective Agreement. With respect to summer school rates, however, it is the Award of this Board that the rate of pay for teaching in summer school for certified Teachers, shall be $15.90 per hour and that the rate for principals shall be the Teaching rate plus 50%.

Northumberland & Newcastle Secondary, 1978-79 - KENNEDY - pp. 9-10

We were advised by the parties that at the present time there would appear to be a potentiality of two teachers becoming surplus to the system. The Board has a policy with respect to teacher retention, and in the previous Collective Agreement, it was provided that the policy would not be changed during the school year. The Teachers propose to amend the Article to continue the provision that the policy will not be changed and to establish a committee representing both parties to make recommendations on the appropriate methods for dealing with an anticipated decline in student enrolment and therefore, in teaching positions. The Board is agreeable to the clause proposed by the Teachers with the single exception of a provision that would require that Teachers declared redundant be given the right of first refusal to teach night school and summer school credit courses. The Board opposes that clause on the basis that the committee, when appointed, should not in any way be restricted in determining methods to deal with the problem, and that the rights with respect to night school and summer school courses should be an aspect for consideration in the recommendations of the committee. It is our view that in all likelihood the Board would, to the extent that is

practicable, make such position available to teachers whose contracts have been terminated for redundancy. However, we see serious problems in the contractual provision to that effect in determining the status of such teachers and the extent of the application of the contract to the night school and summer course activity. We recognize the legitimate concern of the Teachers that those who are redundant have reasonable access to such positions, and for the contract year under review, we would award the first four subclauses of the Article proposed by the Teachers together with the following Article 10.05.

> The Board will use its best efforts to offer to teachers whose contracts have been terminated for redundancy the available positions in teaching night school and summer school credit courses, it being understood that the terms and conditions of employment with respect to such courses are not within the ambit of this Collective Agreement.

Sault Ste. Marie Secondary, 1978-79 - DOWNIE - pp. 12-13

There is no provision in the expired collective agreement on this item. The Teachers have proposed the following new clause:

> Members of the Branch Affiliate employed as teachers in Evening Classes, Summer School Program, or Home Instruction shall be paid at an hourly rate of 1/1000th of the member's salary, as calculated on the basis of full time instruction, from the Grid.

Up to this time, rates of pay for Evening Classes, Summer School Program and Home Instruction have been set by Board policy. The Teachers have made the proposal because of a change in the rates contained in that policy. The rates have been decreased. The Board's position is that the clause proposed by the Teachers cannot properly be the subject matter of negotiation under the provision of Bill 100 and, therefore, should not become part of the collective agreement. Board representatives supplied a lengthy argument in their brief and in oral testimony at the hearing. I do not intend to deal with the argument because it is not necessary, in this case, to do so.

At other boards, the rates of pay for such activity, whether undertaken by members of the Branch Affiliate or not, are typically set outside of collective bargaining. Indeed, the parties indicated that few, if any, collective agreements in Ontario elementary or secondary school education contain such a clause. The Education Relations Commission could find only a few cases where this type of clause, or somewhat related ones, exist in the collective agreement. The Teachers did not provide sufficient reason for inclusion of the clause. In the absence of any compelling evidence to change the existing practice, the request of the Teachers is denied.

North York Secondary, 1979-80 - TEPLITSKY - p. 18

I am not opposed in principle to the sharing of available work on an equitable basis for those qualified. Obviously, overtime for some while others are on layoff is not an attractive situation. Integration of night school and summer school with day school poses problems both of a jurisdictional and practical nature. For one thing, one cannot completely equate night school and summer school teaching with regualr day school teaching from a compensation perspective. The duties and responsibilities and expectations are quite different. There is also a decision of the Ontario Labour Relations Board, The Board of Education for the City of Windsor and the O.S.S.T.F. dated July 18, 1978, which suggests that night school and summer school teaching are not within Bill 100. In my opinion, the solution reached by the M3 participants which involved each Board establishing as a policy that the first consideration be given to permanent Teachers with recall rights for night school and summer school teaching at prevailing rates should apply here as well.

Kirkland Lake Secondary, 1981-82 - BARRETT - pp. 21-22

There is another existing clause in Article 10 which provides that Night School, Summer School and Driver Education teaching positions shall be offered first to qualifed teachers who are redundant to the regular Day School Program. Again this clause was arbitrated into the Agreement at the request of the Teachers and against the objection of the Board. In order to appease the Board's concerns at the time this clause was arbitrated into the Agreement, the following paragraph was included: "It is understood that these positions are outside the scope of the bargaining unit and that Teachers accepting such appointments will be paid at the rates determined by the Board for these positions." The Teachers now wish to delete that clause and in fact to establish rates of pay for these teachers.

This request highights again the difficulties of living with arbitrated Agreements. If the aforesaid clause had been negotiated into the Agreement the Teachers would feel at least morally bound by it. As it was arbitrated in, they have no compunction about asking to have it arbitrated out.

The Board takes the view that these Night School, Summer School and Driver Education teachers are properly outside the scope of the bargaining unit and there is much support for that position in Fact Finder and Arbitration Reports throughout the Province. The Teachers cite contrary views expressed in the recommendations of the Matthews Commission and in a recent Arbitration Award in Niagara South. We hold the majority view, in particular in light of the existing exclusionary clause in the Agreement, and Award no change.

PRELEVEMENT DES COTISATIONS (LOCAL)

Metropolitan Toronto Secondary, 1975-76 - DUBIN - pp. 68-70

The branch affiliates have asked for a voluntary check-off with respect to monthly dues and/or other assessments.

By reason of Bill 100 the branch affiliates became the bargaining agents for all teachers who are members of the branch affiliates. Bill 100 further directs the parties to negotiate "in respect of any term or condition of employment".

Under The Teaching Profession Act, R.S.O. 1970, c. 456 there is already a mandatory check-off, which monies are forwarded to the Ontario Teachers' Federation which in turn remit part of those fees to its affiliated bodies.

There is no specific provision in Bill 100, as there is in the Labour Relations Act, respecting check-off. It is urged by the Boards that because there is a compulsory check-off pursuant to The Teaching Profession Act, they are not required to negotiate for a provision in the contract which relates to a voluntary check-off in favour of the branch affiliate.

I do not think that the absence of a specific provision in Bill 100 relating to check-off and the fact that there is a mandatory check-off pursuant to The Teaching Profession Act, relieves the Boards from negotiating for a check-off pursuant to Bill 100. In my opinion, a voluntary check-off is a term or condition of employment and certainly becomes one when the authorization is presented. A compulsory check-off has been held to be "a condition of employment", in Syndicat Catholique des Employes de Magasins de Quebec, Ins. v. Compagnie Paquet Ltee., 18 D.L.R. (2d) 346. A voluntary check-off for preference of employment has been held to be a term or condition of employment in Hill v. Canadian Pacific Railway Co., et al. 30 D.L.R. (2d) 503.

Bill 100 is something quite different from The Teaching Profession Act, in that it constitutes branch affiliates as bargaining agents. In principle, I can see no objection to a voluntary check-off being awarded to a bargaining agent, which provision has become a common feature in collective agreements. In any event, I think it is a matter that is necessary for me to decide in order to make a decision.

The difficulty in this matter is that there is some uncertainty as to whether the constitution of the branch affiliates provides for the collection of dues by the branch affiliates and/or authorizes the branch affiliates to make any assessments.

Upon proof to the satisfaction of the respective Boards' solicitors that the branch affiliate is authorized by its constitution to collect dues and levy assessments, I direct that a voluntary check-off provision be included in my award. The voluntary check-off, once given should be effective throughout the school year in which it is given and may be renewed by each teacher for the subsequent school year.

PRATIQUES EXISTANTES

Kirkland Lake Secondary, 1981-82 - BARRETT - pp. 12-13

The Teachers further wish to introduce a new clause stating: "The Board shall continue recognized existing practices and policies with respect to terms and conditions of employment. The Board may, however, with due notice to the Teachers, and on reasonable grounds expressed in writing, amend such practices. The Board's decision to do so shall be subject to Article 5 - Grievance Procedure and Arbitration, established by this Agreement for the purpose of determining whether such amendment was justified."

The Board states that this clause would have the effect of locking in all existing practices and policies so they could never be changed without a grievance procedure, and of consequently totally hampering the Board's right to manage the schools.

We understand there have been no grievances filed under the existing Management Rights clause and we were not convinced of any demonstrated need for change. Certainly a clause which would have the effect of locking-in all existing practices and policies and making any change grievable would be excessive in the extreme and could have the effect alleged by the Board. The Teachers must live with the fact that they may be able to negotiate individual practices or policies into the Agreement, but this must be done on an individual basis and not in one fellswoop.

Canadian Forces Base Petawawa Secondary, 1980-81 - MacDOWELL - pp. 20-2

The teachers proposed a clause binding the employer to continue all existing practices unless there is "due notice" and "reasonable grounds" for a change. Unlike the just cause clause, a provision such as this is highly unusual, and could make virtually every managerial decision subject to arbitral review. In effect, the teachers are seeking to have this Board reverse the now generally accepted view concerning the "residual rights of management" and create a feature of the agreement for which there is almost no precedent in the public or private sector. We are not prepared to do so. If the teachers wish to fundamentally alter the status quo in this way, they must do so at the bargaining table.

GRIEFS

Sault Ste. Marie Secondary, 1975-76 - KENNEDY - pp. 23-24

Section 53 of Bill 100 requires the inclusion in a collective agreement of a provision for the final and binding settlement of all differences between the parties and it is for this purpose that Section 18 is proposed for this Agreement. The proposal of the Teachers appears to create what is in my mind an unnecessary distinction between a grievance taken by the Branch Affiliate on behalf of a member as set out in proposed Article 18.02 and what is referred to as a "class grievance" in Article 18.03. The material and explanation submitted by the Teachers does not satisfy me that this is a necessary distinction and I therefore prefer the grievance procedure as proposed by the Board. There is some difference between the two in the specification of time limits, but again, the number of days involved cannot be considered as significant. There are two modifications, however, specifically requested by the Teachers. In the Teachers' proposed Article 18.06 it is specified that the failure of one party to comply with the time allowance or any agreed upon extension thereof shall result in the grievance being terminated in favour of the other party. The Board position on this matter is that if this happens, the grievance procedure simply goes on to the next step. I believe the concern of the Teachers in this regard is that a grievance could be filed and ignored by the other side until it reached the arbitration stage, thereby increasing the expense and inconvenience of the whole procedure and frustrating its basic purpose of resolving the issue at an earlier stage. I see no objection in principle to this proposal on the part of the Teachers and it could, in some circumstances, prevent an intentional abuse of the grievance procedure.

The Teachers also propose in Article 18.07 to state that nothing in the grievance procedure shall preclude the right of the individual Teacher to seek redress in law. I do not think that that is an appropriate paragraph or provision to include. If a Teacher does, in fact, have a right at law, the grievance procedure will not derogate therefrom. Further, I feel that there is some risk that the existence of such a clause might be considered as attempting to modify the final and binding nature of the grievance procedure and is, therefore, an inappropriate provision.

Accordingly, I would direct that the grievance procedure of Article 18 be in the form proposed by the Board, save that Article 18.04 thereof shall be in the form of the Teacher proposed Article 18.06.

Kirkland Lake Secondary, 1981-82 - BARRETT - pp.15-16

The Teachers have rewritten the Grievance Procedure and suggest substantial changes, including an expanded definition of "grievance" to include the right to grieve any existing policy or practice, including any question as to whether a matter is arbitrable. The new clause would also provide for Education Relations Commission Mediation at step 3 in lieu of the existing mediation clause; a clause which would provide for the individual to seek further redress in law in addition to or in lieu of the Grievance and Arbitration Procedure; a clause which would allow the Branch Affiliate, on its own, to continue and submit to arbitration, any grievance filed and later dropped by an individual grievor when the result may have application to other teachers.

The Board takes the position that the present Grievance Procedure is one which is fairly standard and has worked very well, and suggests that there is no demonstrated need for change. The Board however is amenable to the proposed change in Step 3, permitting mediation through the auspices of the Education Relations Commission and further agrees to the Teachers' proposed clause that: "The single arbitrator or Board of Arbitration shall have the power to amend the grievance, modify penalties, including discharge and disciplinary penalties and take whatever action or make whatever decision it considers just and equitable in the circumstances."

The Teachers did not make a convincing argument for the substantial proposed change in the Article, nor did they show any injustice or unworkability of the existing Article. We would reiterate again at this point, that this type of proposed change is a more proper subject matter for negotiation between the parties than arbitration. A Board of Arbitration is not in a position to assess the long-term effects of the proposed new clauses, nor to assess the workability of the existing clause without substantial evidence in that regard.

JUSTE CAUSE

Canadian Forces Base Petawawa Secondary, 1980-81 - MacDOWELL - pp. 19-

The teachers proposed a clause in the agreement providing that there should be no discharge, discipline, or demotion without just cause. Save for the reference to "demotion", there is nothing exceptional about this proposal. Virtually all private sector agreements have contained a clause such as this for decades. As collective bargaining has extended into the public sector, agreements in that milieu have also increasingly contained a similar provision. The teachers point out that a "just cause clause" now exists in approximately one-half of all teacher collective agreements. Several years ago the federal government extended a similar protection to all private sector employees within its jurisdiction who were not covered by collective agreements (see Canada Labour Code R.S.C. 1970, c.L-1, as amended, s. 61.5).

The rationale for the teachers' position is not difficult to understand. Basic fairness requires that when an employee's critical job interests are threatened because of allegedly improper conduct on his part, there ought to be some forum where the justice of the parties' positions, together with any mitigating factors, can be assessed. There is no reason why this principle, now a common feature of employment law, should not be applied in the present case, and the employer was unable to advance any. The difficulty does not lie with the notion that discipline or discharge should be subject to review but rather with the inclusion of the term "demotion".

There is a real problem with the definition of the term "demotion"; and there is an on-going debate among arbitrators as to the appropriateness of demotion as a response to culpable employee conduct. (See Brown and Beatty, Canadian Labour Arbitration, page 335; and E.E. Palmer, Collective Agreement Arbitration in Canada page 199). The issue is inextricably intertwined with issues of competence and the right of the employer to allocate its employees in such a way as will best accomplish its objectives. We prefer therefore to avoid specific reference to the word "demotion", and to simply award that the 1980-81 agreement shall include a clause providing that no teacher employed by the employer shall be disciplined or discharged without just cause.

PAIEMENT DE SOMME FORFAITAIRE/ARGENT COMPTANT

Norfolk Secondary, 1980-81 - McKECHINE - pp 9-10

The Teachers requested a lump sum cash payment to be made to every teacher. The Teachers presented the argument that the cash payment was a bonus and was requested because Teachers engaged in more effort after the strike to make up for work lost by students during the strike. Further, the Teachers argued that the cash bonus would help improve the relationship which has been seriously strained between the Board and its Teachers. The Teachers indicated that this was not a cash payment to reflect interest on monies not paid because of the strike and lengthy negotiations but should be seen to be a bonus in settlement of the dispute and improvement of relations. The Board indicated that it could not accept the arguments presented by the Teachers. It questioned the statement regarding a "productivity" bonus indicating that the students also engaged in "extra" work following the strike.

The Board of Arbitration does not feel that a cash payment is appropriate in the particular circumstances of the case presented by the parties. The productivity rationale is most difficult if not impossible to prove. In addition, if the cash payment was to be evidence of goodwill it would be assumed that such evidence would be manifest at the time the strike was ended rather than being argued before a Board of Arbitration.

Therefore, the Board of Arbitration does not award a cash payment as requested by the Teachers.

Metropolitan Toronto Secondary, 1975-76 - DUBIN - pp. 50-52

The teachers are seeking a lump sum payment in the sum of $720 for all those teachers who were under contract with one of the Boards on January 1, 1975, and who were also under contract with one of the Boards on September 1, 1975, and who have been paid at least for one hundred days during the period between January 1, 1975 and September 1, 1975. This, it is said, is to compensate the teachers for the "poor settlement" that they had entered into in their last contract. In effect, it is a renegotiation now of their prior contract. It has already been observed that the contract last entered into was a voluntary one, and that the Boards unilaterally amended the contract to give additional sums to those who were at their maximum and those holding positions of responsibility, which amendment created parity with the teachers in the elementary school system. Although the fact that the teachers fell behind in comparable rates during their last contract justifies a large increase in their future contract than would normally otherwise be justified, I cannot accept the principle that it is now appropriate to, in effect, renegotiate the former contract which has already expired.

The teachers have demonstrated great skill and determination in pursuit of their objectives. Collective Agreements are invariably viewed as a package, and it must be assumed that the package settlement arrived at in the earlier two years was the best that the teachers thought could be achieved at that time. I am further satisfied that the increase awarded here does give effect to the "catch-up" argument.

I think the Board's analysis of the 24.6% increase, in the manner computed by them, does reflect the "catch-up" argument and can be apportioned in the manner analysed by them as follows:

"Catch-up"		- 5.0%
Increment		- 2.4%
Adjustment		
C.P.I.	- 12.0%)	
Other	- 5.2%)	17.2%
		24.6%

A lump sum of $720, if applied to all those in the bargaining unit as of January 1, 1975 would amount to $6,168,960. It would actually be somewhat less because many of the teachers would not qualify. However, in view of the very substantial increase granted to teachers by this decision, the very substantial additional cost for a lump sum payment cannot be justified at this time.

North York Secondary, 1979-80 - TEPLITSKY - p. 22

The Teachers seek a signing bonus of $230.00. Whether intended or not, such a payment would be viewed as a recrimination against the Board. The Teachers must assume their own losses resulting from the late conclusion of this Collective Agreement. This request is denied.

The Board seeks a clause which would deny retroactive pay for the period of the "work to rule". I am not prepared to exacerbate the relationship by a direction which is recriminatory. This request is also denied. I have included in the Collective Agreement the usual clauses with respect to retroactivity.

POSTES A RESPONSABILITES (CREATION DE)

Peel Secondary, 1976-77 - BECK - pp. 23-24

The schools in Peel have been organized on a subject basis with each department having a Department Head or Director and, should the size of the department warrant it, one or more Assistant Heads or Directors. Two of the schools in Peel have been experimentally organized on a somewhat different basis. In either case, teachers responsible for these departmental duties are referred to as having positions of responsibility and receive remuneration above that of a regular teacher. There is concern among the teachers that the Board intends to empower the Principals to reorganize their schools as they see fit and to set the allowances paid to the new positions as they choose, subject to the total cost of the school following within the Board's budget. The teachers indicated that this fear is fed by the fact that the schools in Halton County have been so reorganized. The Board sought to assure the teachers that they plan no such massive reorganization of positions of responsibility, except that they did desire the Principals of two new schools which were to open in September, 1978 to have the right to experiment. It seems to me that there is not much between the parties on this issue, except that the teachers wish some reassurance that a new system will not be unilaterally imposed on them during the term of the new agreement. This seems reasonable to me, subject to minor change and experiment in the new schools, and, accordingly, a clause to the following effect shall appear in the new collective agreement.

> The current system of positions of responsibility in effect as of the date of signing of this agreement shall remain unchanged during the term of this agreement subject only to changes of a minor nature and to such experimental changes as may be made in the two new regular schools to be opened in September of 1978 provided however that such experimental changes will only be made after full consultation with the OSSTF, District 10.

JOURS POUR PERFECTIONNEMENT PROFESSIONNEL

Metropolitan Toronto Secondary, 1975-76 - DUBIN - p. 63

I do not think it appropriate for me to make a direction as to what total number of days for professional activity should be allowed in 1976-77. Professional activity days are provided for by Regulation and the Regulation will govern.

MESURES DISCIPLINAIRES

Metropolitan Toronto Secondary, 1975-76 - DUBIN - p.68

As a result of the strike the teachers are seeking a "no recrimination" clause. I would have hoped that such a clause would not be necessary, but since it has been put in dispute, I must deal with it. The strike being a lawful strike, there should be no recrimination or disciplinary action taken by reason of the strike with respect to all those affected by it.

North York Secondary, 1979-80 - TEPLITSKY - pp.25-26

The Board seeks the following clause:

> "The Branch Affiliate shall remove or cause its affiliate to remove any sanctions against the Board restraining or encouraging Teachers or other persons to refrain from providing services to the Board in connection with any Board program or activity, including night school and summer school programs or from applying for any position with the Board. The Branch Affiliate shall not instigate or continue and shall cause its affiliate not to instigate or continue any action against any Teacher because of the Teacher's alleged non-compliance with any direction or sanction of the Branch Affiliate, the affiliate or the Ontario Teachers' Federation issued in respect of the Board."

I have no hesitation in awarding the first half of the clause. A settlement having been made, the Branch Affiliate must use its best efforts to cause the Federation to lift the "pink letter" with respect to night school and summer school teaching.

With respect to the second half of the clause, I left open in the York Borough med-arb the issue of my jurisdiction to make such an order which, in effect interferes with a matter of internal union discipline.

I was referred to Sec. 35(2) of Bill 100 as the basis for my jurisdiction. This section provides as follows:

> "35.-(1) The arbitrator or board of arbitration shall inquire into, consider and decide on all matters remaining in dispute between the parties.
>
> (2) In the conduct of proceedings before him or in and in reaching a decision in respect of a matter in dispute, the arbitrator or board or arbitration may inquire into and consider any matter that the arbitrator or board of arbitration considers relevant to the making of an agreement between the parties."

In my opinion, Sec. 35(2) does not permit me to interfere in a matter of internal union business. Such a step is not necessary to the making of Collective Agreement. It is the equivalent of my directing at the request of the Teachers that the Board not discipline an employee who is not a member of the bargaining unit who refused to obey a lawful employer order. This part of the request is denied.

York Borough Secondary, 1979-80 - TEPLITSKY -- pp. 2-4

The one matter that I propose to comment upon briefly involves an employer proposal that I direct the Union not to pursue recriminatory or disciplinary action against any of its members who refused to observe a Union directive (referred to as a "pink letter") issued with respect to night school and summer school teaching.

In support of this proposal, Mr. Stewart referred me to Mr. Justice Dubin's award, between the same parties, dated the 3rd day of March, 1976 where His Lordship states: "As a result of the strike the teachers are seeking a 'no recriminations' clause. I would have hoped that such a clause would not be necessary, but since it has been put in dispute, I must deal with it. The strike being a lawful strike, there should be no recrimination or disciplinary action taken by reason of the strike with respect to all those affected by it." Mr. Stewart also submitted that the pursuit of recriminatory or disciplinary action by the Union might seriously affect the relationship between the parties.

Mr. Forster submitted that I have no jurisdiction to intervene in a matter of internal Union business.

In my opinion, the pursuit of recriminatory or disciplinary action does risk aggravation of the relationship between these parties, a relationship which has been strained over the last 2 years. The attitude of the parties during this process bodes well for the future and it would be a pity if the relationship were further damaged. I hope that the Union will, in the interest of furthering a good climate for collective bargaining, refrain from initiating or pursuing any disciplinary or recriminatory action against any of its members who disobeyed the "pink letter".

On the other hand, the action by the Union in issuing the "pink letter" was a lawful one. Mr. Justice Dubin's direction that the pursuit or a lawful strike should not attract recrimination of discipline, cannot justify a direction by me that the disobedience of a lawful Union activity equally cannot attract discipline or recrimination.

In contrast to the factual situation which confronted Mr. Jusitice Dubin, two competing values are raised here: the one being the legitimate interest of the Union in promoting discipline of its members, the other being the legitimate interest in promoting a healthy climate for labour relations and collective bargaining between the parties. I think that the Union must judge how those competing interests should be resolved and must accept responsibility for its choice.

Accordingly, I deny this proposal. My failure to discuss the question of jurisdiction raised by Mr. Forster should not be construed as either a rejection or an acceptance of his submission.

TERME DE LA CONVENTION

Metropolitan Toronto Secondary, 1975-76 - DUBIN - pp. 10-13

Counsel for the teachers submitted that my award should be limited to a term of one school year expiring this August 31, only a few months hence. He submitted that to impose a longer term would encroach unnecessarily upon the teachers' right to negotiate a new contract for the ensuing year in the manner provided for in The School Boards and Teachers Collective Negotiations Act, 1975, (hereinafter referred to as Bill 100), and upon their right to strike if they thought it necessary to do so. Interference with the rights given to the teachers by Bill 100, he urged, ought not to extend beyond the exigencies of the moment. He pointed out that the majority of the contracts of recent date entered into by teachers have been for a period of one year and stressed that through the mediation process during the strike, the Boards' negotiators had made a proposal based on a one year term.

On the other hand, counsel for the Boards urged, in the strongest terms, that my decision should be for a term of two school years, being the maximum provided by Bill 1. Any award short of that period, he submitted, would plunge the parties into immediate negotiations for a new contract. Indeed, Bill 100, which would then govern, would require the parties to commence negotiations immediately if the term of my decision expired this year. In support of his submission, counsel filed a report prepared by the Directors of Education of the School Systems of Metropolitan Toronto. The thrust of what is said by the directors is that an award which would require the parties to embark upon negotiations for a new contract even before the completion of the balance of this school year would jeopardize the efficient administration of the school system for the remaining months of this school year and would place the 1976-77 school year in further jeopardy which, in their opinion, would be to the detriment of the students. They point out that the catch-up program now in effect for many of the students will have to be continued in the next school year.

I am sympathetic with the submission made by counsel for the teachers that the bargaining rights granted to teachers by Bill 100 should not be interfered with unnecessarily.

During the hearing I advised the parties that I would give consideration to an award for a period of sixteen months ending in December, 1976. However, an award for such a term would also put the parties into immediate negotiations and would terminate the contract in the middle of the school year, neither of which event would be satisfactory.

Mr. Hartt, who played such a prominent role in the negotiations, reported on October 1, 1975, approximately one and one-half months before the strike, as follows:

> "If you assume as I do that it is only when the right to strike looms near that the hard

> decisions are taken by parties in any collective labour negotiations, the Act condemns the parties to enternal negotiations in the event that the parties opt for a one year agreement. Having spent two and one-half months intensively engaged in such a process this summer, I feel obliged to state that not even the wildest zealots in the respective constituencies of the parties should expect the representatives of the parties to perform year after year the exercise in wearing each other down which went on this year."

In my opinion, an efficient school administration is dependent upon a mutual understanding and respect between teachers and students, teachers and parents, and teachers and Boards of Education, and it is also dependent on the support of the public at large. Without attaching blame to anyone, there is no doubt that the prolonged negotiations and strike have strained the relationships of all. The atmosphere has become emotionally charged.

I agree with what has been said by the Directors of Education that the public interest requires that the term of my award be for a period which fully encompasses two school years. I have decided that my decision should be for a period commencing on the 1st day of September, 1975 and expire on the 31st day of August, 1977. I am hopeful that within that period the mutual understanding and respect which heretofore had existed will be restored.

North York Secondary, 1979-80 - TEPLITSKY - pp. 6-7

The Teachers request that I only impose a contract for the year 1978-79 and 1979-80. The Board is seeking a third year and the imposition of the Accord which was entered into between the Branch Affiliates in Scarborough, East York and Etobicoke and their respective Boards of Education (hereinafter called the M3 Agreement) which carried a 5-year term.

Mr. Stewart argued that a 3-year term was necessary to maintain stability in the school system. He referred me to Mr. Justice Dubin's findings a page 13 of his Award between the same parties dated March 3, 1976 - findings which he maintained applied to the situation at hand. Mr. Kinsinger, the Director of Education, testified that the welfare of the students in the system required a period where the energies of the parties were directed to pursuits other than collective bargaining. Mr. Connor argued that I ought not to interfere with the rights of the Teachers to bargain under Bill 100 and that a third party should be as little intrusive as possible. Further, any disruption caused by the "work to rule" was inevitable and flowed from Bill 100's recognition of that right. He continued by suggesting that Teachers should not be penalized for exercising their statutory right to strike.

I am persuaded that I should award a third year although I entertain some doubt that problems created either by the "work to rule" or by the prolonged negotiations which have taken place to date provide a proper basis. These parties are not able at the present time and would not be able, within the reasonably foreseeable future, to negotiate to finality a Collective Agreement for 1980-81. Their relationship is strained to the point that they were unable to settle the kinds of issues which ordinarily are settled even in those disputes which require some arbitration. A further set of negotiations at this time would only aggravate the relationship. The parties require, if there is any hope for collective bargaining of an orderly and rational kind in the future, to have a period which can be used to restore mutual understanding and to develop the skills and attitudes necessary for this purpose.

EXPERIENCE EN METIER (RECONNAISSANCE DE)

Kirkland Lake Secondary, 1975-76 - JOHNSTON - pp. 65

The Teachers contended that if one full year of experience is recognized for the teaching experience increment then one full year of trade experience should be appropriate for recognition of some kind. Moreover, the Teachers submitted that there was some evidence to show difficulty on occasion in hiring competent people to teach in specialized areas and that an additional inducement of this kind would help to alleviate the problem at no major cost to the Board.

I accept these arguments advanced by the Teachers. One year in a related trade experience after full qualification in the trade is a sufficient minimum period for that experience to have ripened and matured to the point where its benefits can be applied in the classroom. It would not seem necessary that a two-year qualification period be served before benefits in the classroom would result. Consequently, I agree with the Teachers' request on this item.

TRANSFERT

Sault Ste. Marie Secondary, 1975-76 - KENNEDY - pp. 14-15

In a situation where a Teacher is being transferred within the system the Teacher proposal on this Article would require thirty (30) school days prior notice to the Teacher involved in such transfer, whereas the Board proposal is that all possible notice will be given prior to such transfer. There was no evidence that past Board practice in this regard has caused hardship. The concern of the Board is that with an obligatory thirty days prior notice it will be unable to respond to Teacher transfer conditions created by declining enrolments, alterations in the pattern of course selection, and other staff requirements which occur in circumstances beyond the control of the Board but which must be met immediately. I feel that a compromise wording can meet the legitimate interests of both parties and I would include Article 4.05 in the contract, drafted as follows:

> "In the case of transfer, notification shall be given in writing, with reasons, to the Teacher concerned at least thirty (30) school days prior to the implementation thereof; provided, however, that where the need to make the transfer results from conditions beyond the control of the Board and which could not reasonably have been anticipated by the Board the notification in writing with reasons shall be given to the Teacher concerned forthwith when the decision to transfer has been made."

PART IV

VOLUNTARY BINDING ARBITRATION

Parties to give notice to Commission where arbitration agreed upon

28.—(1) Where the parties agree to refer all matters remaining in dispute between them that may be provided for in an agreement to an arbitrator or a board of arbitration, the parties shall jointly give written notice to the Commission that they have so agreed and the notice shall state,

(*a*) that the parties agree to refer the matters to an arbitrator and,

(i) the date of appointment and the name and address of the arbitrator, or

(ii) that the parties have not appointed the arbitrator and that the parties request the Commission to appoint the arbitrator; or

(*b*) that the parties agree to refer the matters to a board of arbitration and,

(i) that the parties have each appointed a person as a member of the board of arbitration and shall set out the names and addresses of the two members so appointed, or

(ii) that both of the parties or one of them, as the case may be, has not appointed a person as a member of the board of arbitration and that the parties request the Commission to appoint the members or member, as the case may be, of the board,

and the notice shall state that the decision of the arbitrator or board of arbitration will be accepted by the parties as binding upon them.

Parties not to withdraw

(2) Except as provided in section 56, a party shall not withdraw from arbitration proceedings under this Part after notice is given to the Commission in accordance with subsection (1).

Where appointments made by Commission

(3) Where the parties, in the notice mentioned in subsection (1), request the Commission to appoint the arbitrator or the members or one of the members of the board of arbitration, the Commission shall make the appointment or appointments and shall forthwith thereafter give notice thereof to the parties setting out the name and address of the appointee or the names and addresses of the appointees, as the case may be, together with the date of the appointment or appointments.

Appointment of chairman by members

(4) Where the parties agree to refer all matters remaining in dispute between them to a board of arbitration, the two members of the board of arbitration shall, within ten days after the giving of notice of their appointment by the parties or by the Commission, as the case may be, appoint a third person to be chairman of the board of arbitration and the chairman shall forthwith give written notice to the Commission of his appointment.

Where Commission to appoint chairman

(5) Where the two members of the board of arbitration are unable to appoint or to agree on the appointment of the chairman of the board of arbitration within the period of time set out in subsection (4), the Commission shall appoint the chairman and shall give notice of the appointment to the two members and to the parties and the notice shall set out the name and address of the person appointed and the date of the appointment. 1975, c. 72, s. 29.

Persons prohibited as arbitrator or members or chairman of board of arbitration

29. No person shall be appointed an arbitrator or member or chairman of a board of arbitration who has a direct pecuniary interest in the matters coming before him or who is acting or has, within the period of six months immediately before the date of his appointment, acted as solicitor, counsel, negotiator, advisor or agent of either of the parties, but no person shall be deemed to have a direct pecuniary interest by reason only of being a ratepayer within the area of jurisdiction of the board that is a party. 1975, c. 72, s. 30.

Vacancy

30.—(1) Where a member of a board of arbitration is unable to enter on or to carry on his duties so as to enable a decision to be rendered within the period of time required by subsection (2) or ceases to act by reason of withdrawal or death before the board of arbitration has completed its work, a replacement shall be appointed by the body that appointed the member, and the board of arbitration shall continue to function as if such member were a member of the board of arbitration from the beginning.

Where chairman unable to act

(2) Where the chairman of a board of arbitration is unable to enter on or to carry on his duties so as to enable a decision to be rendered within sixty days after his appointment or within such longer period of time as may be provided in writing by the board of arbitration and consented to by the Commission or ceases to act by reason of withdrawal or death, the Commission shall give notice thereof to the members of the board of arbitration who shall within seven days of the giving of the notice appoint a person to be the chairman and if the appointment is not so made by the members it shall be made by the Commission, and after the chairman is appointed the arbitration shall begin *de novo*.

Where arbitrator unable to act

(3) Where an arbitrator is unable to enter on or to carry on his duties so as to enable a decision to be rendered within sixty days after his appointment or within such longer period of time as may be provided in writing by the arbitrator and consented to by the Commission or ceases to act by reason of withdrawal or death, the Commission shall give notice thereof to the parties who shall within seven days of the giving of the notice appoint a person to be the arbitrator and if the appointment is not so made it shall be made by the Commission and after the arbitrator is appointed the arbitration shall begin *de novo*. 1975, c. 72, s. 31.

Notice of matters agreed upon and matters in dispute

31. Within seven days after the giving of notice that the arbitrator or the chairman of the board of arbitration, as the case may be, has been appointed, each party shall give written notice to the arbitrator or chairman and to the other party setting out all the matters that the parties have agreed upon for inclusion in an agreement and all the matters remaining in dispute between the parties. 1975, c. 72, s. 32.

Procedure

32.—(1) The arbitrator or board of arbitration shall determine his or its own procedure but shall give full opportunity to the parties to present their evidence and make their submissions.

Idem

(2) If the members of a board of arbitration are unable to agree among themselves on matters of procedure or as to the admissibility of evidence, the decision of the chairman governs.

Decision

(3) The decision of a majority of a board of arbitration is the decision of the board, but if there is no majority, the decision of the chairman is the decision of the board. 1975, c. 72, s. 33.

Powers of arbitrator or board of arbitration

33.—(1) The arbitrator or board of arbitration has power,

(*a*) to summon any person,

(i) to give oral or written evidence on oath or affirmation to the arbitrator or board of arbitration, or

(ii) to produce in evidence for the arbitrator or board of arbitration such documents and other things as the arbitrator or board of arbitration may specify;

(*b*) to administer oaths and affirmations;

(*c*) to accept for or exclude from consideration any oral testimony, document or other thing, whether admissible in a court of law or not.

Stated case for contempt for failure to attend, etc.

(2) Where any person without lawful excuse,

(*a*) on being duly summoned under subsection (1) as a witness before the arbitrator or board of arbitration, as the case may be, makes default in so attending;

(*b*) being in attendance as a witness before the arbitrator or board of arbitration, as the case may be, refuses to take an oath or to make an affirmation legally required by the arbitrator or board of arbitration to be taken or made, or to produce any document or thing in his power or control legally required by the arbitrator or board of arbitration to be produced to him or it, or to answer any question to which the arbitrator or board of arbitration may legally require an answer; or

(*c*) does any other thing that would, if the arbitrator or board of arbitration had been a court of law having power to commit for contempt, have been contempt of that court,

the arbitrator or board of arbitration may state a case to the Divisional Court setting out the facts and that court may, on the application of the arbitrator or board of arbitration, inquire into the matter and, after hearing any witnesses who may be produced against or on behalf of that person and after hearing any statement that may be offered in defence, punish or take steps for the punishment of that person in like manner as if he had been guilty of contempt of the court. 1975, c. 72, s. 34.

Duty of arbitrator or board of arbitration

34.—(1) The arbitrator or board of arbitration shall inquire into, consider and decide on all matters remaining in dispute between the parties.

Matters that may be considered by arbitrator or board of arbitration

(2) In the conduct of proceedings before him or it and in reaching a decision in respect of a matter in dispute, the arbitrator or board of arbitration may inquire into and consider any matter that the arbitrator or board of arbitration considers relevant to the making of an agreement between the parties. 1975, c. 72, s. 35.

Time for report of arbitrator or board of arbitration

35.—(1) The arbitrator or board of arbitration shall complete the consideration of all matters in dispute between the parties and shall report in writing his or its decision on the matters to the parties and to the Commission within sixty days after the giving of notice of the appointment of the arbitrator or of the appointment of the chairman of the board of arbitration, as the case may be, or within such longer period of time as may be provided in writing by the arbitrator or board of arbitration and consented to by the Commission.

Effect of decision

(2) The decision of the arbitrator or board of arbitration is binding upon the parties and they shall comply in good faith with the decision. 1975, c. 72, s. 36.

Preparation and execution of document by parties

36.—(1) Within thirty days after receipt by the parties of the report of the arbitrator or board of arbitration, as the case may be, the parties shall prepare a document giving effect to all matters agreed upon by the parties and the decision of the arbitrator or board of arbitration and shall execute the document and thereupon it constitutes an agreement.

Where arbitrator or board of arbitration to prepare document

(2) If the parties fail to execute the document within the period of time mentioned in subsection (1), the arbitrator or board of arbitration, as the case may be, shall prepare the document and submit it to the parties and shall fix the time within which and the place where the parties shall execute the document.

Failure to execute document

(3) If the parties or either of them fail to execute the document within the time fixed by the arbitrator or the board of arbitration, the document shall be deemed to be in effect as though it had been executed by the parties and the document thereupon constitutes an agreement. 1975, c. 72, s. 37.

APPENDICE B

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